Attorney General v Torino Enterprises Limited (Civil Application 84 of 2012) [2022] KECA 78 (KLR) (4 February 2022) (Judgment)

Neutral citation: [2022] KECA 78 (KLR)

REPUBLIC OF KENYA

IN THE COURT OF APPEAL AT NAIROBI

CIVIL APPLICATION 84 OF 2012

DK MUSINGA, AK MURGOR & J MOHAMMED, JJA

FEBRUARY 4, 2022

BETWEEN

ATTORNEY GENERAL ..... APPELLANT

AND

TORINO ENTERPRISES LIMITED ..... RESPONDENT

(Being an appeal from the Judgment and Decree of the High Court of Kenya at Nairobi (Gacheche, J.) dated 4th July 2011 in H.C. Petition No. 38 of 2011)

JUDGMENT

1. The property in dispute in this appeal is Land Parcel No. 22524, Grant Number IR 85966 (hereinafter referred to as ('the suit land') situated in Embakasi area of Nairobi and said to measure about 87.910 ha (207 acres or thereabout).

2. The appellant alleges that the Department of Defence ('DoD') has since the year 1986 been in possession and occupation of the suit land and therefore the suit land was not available for allocation to any person or entity thereafter. The respondent on the other hand alleges that it acquired legal title to the suit land on 26th April 2001 by way of a transfer from an allottee of the same known as Renton Co. Ltd ('Renton') at a valuable consideration of Kenya Shillings Twelve Million (Kshs.12,000,000.00) for a term of 99 years commencing on 1st January 2001. Renton had allegedly been granted the suit land vide an allotment letter dated 19th December 1999 by the Commissioner of Lands.

3. In the petition filed before the High Court, the respondent alleged that sometime in the year 2005, DoD encroached on the suit land and fenced off a total of 90 acres thereof; and that despite the numerous demands to desist from trespassing on the suit land, DoD proceeded to construct a demining college thereon and positioned armed security officers to guard the suit land.

4. According to the respondent, the encroachment of the suit land by DoD was unlawful and unconstitutional and contravened its right to property as guaranteed under Article 40(3) of the

Constitution of Kenya. The respondent also averred that DoD did not follow the laid down procedures set out in the *Land Acquisition Act* (Caps 295) Laws of Kenya before illegally dispossessing it of the 90 acres.

5. The respondent in its petition sought, inter alia, the following orders:

    a) A declaration that the Government acquisition of the respondent's 90 acres from the suit was done in contravention of Article 40(3) of the Constitution.

    b) A declaration that the said occupation, retention and detention of the respondent's 90 acres amounts to compulsory acquisition.

    c) The respondent be restored possession of its land in the same condition as it was when it was unlawfully acquired by the Government.

    d) An order that the appellant do pay the respondent mesne profits from the date of occupation until restoration.

    e) In the alternative to prayer c) above, an order the payment of Kenya Shillings One billion five hundred and thirty million (Kshs.1,530,000,000.00) being the current value of the 90 acres with interest thereon at prevailing Central Bank rates from the date of the petition till payment in full.

    f) Costs of the petition.

6. The petition was opposed by way of a replying affidavit sworn by Nassoro Alfani Mwamboga, Staff Officer II at DoD, wherein DoD argued that in 1984 it made a decision to acquire more land for the expansion of the Embakasi Garrison. Since the adjoining land was registered in the name of the Nairobi City Council ('NCC'), DoD requested the Permanent Secretary, Ministry of Defence, to begin consultative engagements with the NCC and other stakeholders aimed at acquiring the intended land. In the year 1986, the Ministry identified the intended land for its expansion purposes, had it surveyed, beaconed and fenced; that after various stakeholder meetings and engagements, the Commissioner of Lands assured DoD that the land it occupied would be registered in its name. In this regard therefore, DoD argued that the registration of the suit land in the respondent's name was illegal and challenged the sanctity of the title issued to the respondent. DoD argued that having occupied the suit land and put up important military facilities thereon, the suit land was by all means public land, not capable of allocation to a private entity and therefore the title issued to the respondent was not capable of protection pursuant to Article 40(6) of the Constitution.

7. The trial judge, (Gacheche, J.) having considered the petition, the supporting and replying affidavits as well as rival submissions, held that the respondent was the lawful registered proprietor of the suit land and its right to enjoy the property as the absolute and indefeasible owner thereof is protected under section 23(1) of *Registered Titles Act (now repealed)* and must be protected at all times. Accordingly, in its judgment dated 4th July 2011, the trial court made the following declarations:

    > " a) That the acquisition of the suit property by the appellant was done in contravention of Article 40(3) of the Constitution of Kenya & the Land Acquisition Act and thus the occupation, retention, detention and any continued occupation of the said portion of the suit land amounts to compulsory acquisition without compensation contrary to Article 40(3) of the Constitution of Kenya.

b) The appellant shall within the next 30 days restore the possession of the said land to the respondent in the same condition as it was when it was unlawfully acquired or alternatively to pay to the respondent the sum of Kshs.1,530,000,000.00 being the current market value of the said land as per the valuation report produced in court.

c) Interest shall accrue on the award at court rates till payment in full.

d). The prayer for mesne profits is hereby declined.

e) The respondent herein shall have costs of this cause."

8. Aggrieved by the decision of the learned judge, the appellant lodged the instant appeal. The appellant has raised twenty-five(25) grounds of appeal in its memorandum of appeal, some of which can be consolidated. The appellant avers that the trial judge erred in law and in fact: in failing to consider that the appellant had been in actual occupation of the suit land for decades before the purported registration of the suit land in the respondent's name; that DoD being a State organ within the meaning of Article 62(1)(b) had an indefeasible constitutional right to user and occupation title to the said land regardless of whether the appellant had subsequently been issued with title to the said premises or not; in failing to consider that the uninterrupted occupation of the land by the appellant and the erection of military installations thereon had created a public interest that overrides all private interests; in failing to find that the suit land was an original allocation from the Commissioner of Lands and thus was Government land within the meaning of Government Lands Act; in failing to find that the title documents were processed in favour of the respondent without the consent of the appellant's Accounting Officer; in finding that there was compulsory acquisition; in failing to consider that some of the documents relied on by the respondent in its case were obtained fraudulently; in granting the respondent an award of Kshs.1,530,000,000.00 on the basis of an unproved valuation report; in failing to find that the title purportedly acquired by the respondent contravened the provisions of Article 40(6) of the Constitution; and in failing to find that there was fraud in the process of registration of the suit land in the name of the respondent.

9. The appeal was disposed of by way of written submissions and oral highlights. It is important to point out that before the matter was set down for hearing, the appellant vide a notice of motion dated 5th October 2017 sought leave of this Court to adduce additional evidence. This Court (Waki, Gatembu & Odek, JJ.A.) on 22nd February 2019 allowed the appellant's application and subsequently on 7th March 2019 the appellant filed a supplementary record of appeal containing the new evidence. The additional evidence, which was to be adduced by way of an affidavit and filed as a supplementary record of appeal, consisted of the following documents:

a. A copy of the survey plan 179/18 for LR No.13461.

b. A copy of a letter of allotment dated 19th December 1999.

c. A copy of the transfer signed on behalf of Renton Company Limited.

d. A copy of the letter from the Department of Defence to the Commissioner of Lands dated 22nd February 1996.

e. Letters from the Head of Public Service to the Commissioner of Lands dated 3rd August 1998 and 8th July 1999.

f. Plaint filed by the Nairobi City Council against the Attorney General, Minister for Defence and the Kenya Defence Forces touching the suit land in Nairobi ELC No.282 of 2012 and the statement of defence in that case.

Similarly, the Court granted leave to the respondent to file a replying affidavit to the supplementary record of appeal, which the respondent duly filed. We shall return to the issue of the replying affidavit later.

10. At the hearing of this appeal, Mr. Eredi, Deputy Chief State Counsel, appeared for the appellant while the respondent was represented by Mr. Omiti. At the beginning of his submissions, Mr. Eredi contended that some of the documents that were relied upon by the respondent before the trial court and others annexed to the respondent's replying affidavit are public documents that do not comply with sections 68 (2) (c) and 80 of the *Evidence Act*. He urged this Court to expunge from the court record such documents. He cited documents appearing at pages 32 and 52 of the record of appeal, and documents appearing at pages 21, 22, 23-27, 28-29, 30, 32 and 33 of the respondent's replying affidavit. These are either uncertified copies of various public and private documents or confidential correspondence marked 'restricted' or 'secret', including a Cabinet Memorandum relating to the suit land.

11. Mr. Eredi submitted that DoD assumed possession of the suit land in the year 1986. The appellant therefore had an open, long and uninterrupted physical possession, occupation, and use of the suit land (which included construction of military installations and facilities) which period was before the purported allocation to Renton and subsequent transfer and registration of the land in the name of the respondent; that once DoD occupied the suit land, the same became alienated public land by virtue of Article 62(1) (b) of the Constitution and could not be allocated to anyone during the process of official transfer of the suit land to DoD.

12. On whether there was an element of fraud in the manner in which the respondent acquired the land, it was submitted that the title to the land was created and processed while the DoD was in the process of securing registration of the suit land in its name; that although the Commissioner of Lands had given assurances to DoD that its land was secure and would not be allocated, he went ahead to allot the land to Renton, who transferred it to the respondent. Additionally, that the title to the respondent was processed in a record one day. According to the appellant, this was a manifestation of fraud. The appellant placed reliance on the case of *Chemey Investment Limited v. Attorney General & 2 others [2018] eKLR* to buttress his argument. The appellant also took issue with the propriety of the allotment letter, noting that it contained certain conditions that had to be met by Renton within a stipulated timeline. According to the appellant, the fact that Renton had not satisfied certain conditions in the allotment letter meant that it had since lapsed, and the process ought to have begun afresh; that therefore, any subsequent transactions hinged on the letter of allotment were null and void. The case of *Mbau Saw Mills v. Attorney General & 2 others [2014] eKLR* was citedin support of this argument.

13. It was also argued that occupation of the land by DoD created public interest on the suit land, which overrides any private interests. The appellant cited the cases of *Hermanus Phillipus Steyn v. Giovanni Gnecchi-Ruscone [2013] eKLR* to demonstrate what constitutes public interest and the case of *Kenya Guards & Allied Workers Union v. Security Guards Services & 38 Others (IP) H.C Misc 1159 of 2003* where it was held that public interest supersedes private interests of an individual.

14. In sum, the appellant urged us to find that the respondent's claim of title over the suit land contravened the provisions of Article 40 (6) of the Constitution and that the respondent was not entitled to the orders that were granted by the High Court.

15. The crux of the respondent's submission was that the suit land was private land that could not be forcefully taken by DoD without compensation. It was submitted that the suit land was private property and not unalienated public land as alleged by the appellant; that the suit land was part of a large portion of land alienated to Kayole Estates Limited in the year 1964 and later transferred to NCC in the 1971. Therefore, by the time DoD alleged to have acquired possession of the suit land, the same was not unalienated public land. The respondent cited the case of *Embakasi Properties Limited & Another v. The Commissioner of Lands & Another [2019] eKLR* to buttress its submissions.

16. On the issue whether the occupation of the suit land by the DoD created a public interest over the property which could override private interest, the respondent submitted that there can be no unchecked power to invade private property supported by vague constitutional precepts in justification of public interest. The respondent cited the cases of *Elizabeth Wambui Githinji & 29 others v. Kenya Urban Roads Authority & 4 others [2019] eKLR* and *Emfil Limited v. Registrar of Titles [2014] eKLR* to support its argument.

17. With regards to the issue of reliance on public documents that did not comply with sections 68 (2) (c) and 80 of the *Evidence Act*, the respondent argued that this was not raised as an issue by the appellant before the High Court and should not therefore be entertained by this Court. We were urged to dismiss the appeal and affirm the trial court's findings.

18. As this is a first appeal, our duty is to analyse and re-assess the evidence on record and reach our own conclusions in the matter. (See *Selle v. Associated Motor Boat Co. [1968] EA 123*; *Ephantus Mwangi v. Duncan Mwangi Wambugu [1982-88] 1 KAR 278*). In *Peter v Sunday Post Ltd [1958] EA 424*, the Court of Appeal of Eastern Africa stated thus:

> " Whilst an appellate court has jurisdiction to review the evidence to determine whether the conclusion of the trial judge should stand, this jurisdiction is exercised with caution; if there is no evidence to support a particular conclusion, or if it is shown that the trial judge has failed to appreciate the weight or bearing of circumstances admitted or approved, or has plainly gone wrong, the appellate court will not hesitate to decide."

19. We have considered the grounds of appeal, the rival submissions by counsel as well as the judgment of the trial court and the applicable law. In our view, the main issues that commend themselves as determinative of this appeal are the following:

    i. Whether some of the documents that were relied upon by the respondent offended the provisions of sections 68 (2) (c) and 80 of the *Evidence Act*.

    ii. Whether the suit land was available for alienation and/or allocation.

    iii. Whether the registration of the suit land in the respondent's name was legally done.

    iv. Whether the respondent was illegally dispossessed of the suit land and therefore entitled to compensation.

20. According to the provisions of section 64 of the *Evidence Act*, Cap 80 Laws of Kenya, the contents of documents may be proved either by primary or by secondary evidence. Under section 66, secondary evidence includes certified copies given under the provisions of the Act. Section 67 requires that documents must be proved by primary evidence, except in cases mentioned in section 68(1) when

secondary evidence may be given of the existence, condition or contents of a document in the following cases, the relevant ones for our purposes being paragraphs (e) and (f):

> "(e) when the original is a public document within the meaning of section 79;
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> f. when the original is a document of which a certified copy is permitted by the *Evidence Act* or by any written law to be given in evidence."

21. Section 68(2) (c) provides that in cases mentioned in paragraphs (e) and (f) of section 68(1), a certified copy of a document, but no other kind of secondary evidence, is admissible.

22. The term "public document" is defined at section 79 of the *Evidence Act* as follows:

> "(1) The following documents are public documents-
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> a. documents forming the acts or records of the acts-
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> i. of the sovereign authority; or
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> ii. of official bodies and tribunals; or
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> iii. of public officers, legislative, judicial or executive, whether of Kenya or of any other country;
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> b. public records kept in Kenya of private documents.
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> 2. All documents other than public documents are private."

23. Section 80 of the *Evidence Act* provides for the manner in which public documents are to be certified. It states:

> "80. Certified copies of public documents
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> (1) Every public officer having the custody of a public document which any person has a right to inspect shall give that person on demand a copy of it on payment of the legal fees therefor, together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof, as the case may be, and such certificate shall be dated and subscribed by such officer with his name and his official title, and shall be sealed whenever such officer is authorized by law to make use of a seal, and such copies so certified shall be called certified copies.
>
> (2) Any officer who by the ordinary course of official duty is authorized to deliver copies of public documents shall be deemed to have the custody of such documents within the meaning of this section."

24. We have examined the pleadings and other documents filed in the High Court and note that the appellant had at paragraphs 9, 10 and 17 of the replying affidavit sworn by Nassoro Alfani Mwamboga on 23rd May 2011 and in the written submissions dated 23rd May 2011 objected to the reliance on restricted and confidential documents in support of the petition and which are not certified as by law required. The High Court however did not address this issue in its judgment. We therefore do not agree with the respondent's argument that this issue was not raised before the trial court.

25. We have examined the documents appearing at pages 32 and 52 of the record of appeal and at pages 21, 22, 23-27, 28-29,30, 32 and 33 of the respondent's supplementary record of appeal and have no

doubt that they fall under the category of public documents specified in section 79. These documents have no certification stamp or seal at all. The respondent did not disclose how it acquired any of these documents which do not appear to be addressed to it by the makers thereof, or how they came to be in its possession. Some of them include confidential cabinet documents and correspondence between top DoD officers and the head of Public service.

26. This Court in the case of *Dickson Ngigi Ngugi v Morrison Njenga Waweru [1979] eKLR* stated thus:

> " ...We are of the opinion that copies of documents which are filed in Court being secondary evidence and which could be certified should be certified as required in the *Evidence Act*... The Court must be satisfied of the authenticity of the copies filed..."

27. The documents appearing at pages 32 and 52 of the record of appeal and at pages 21, 22, 23-27, 28-29, 30, 32 and 33 of the respondent's supplementary record of appeal do not satisfy the provisions of section 80 of the *Evidence Act* and must be expunged from the Court record, which we hereby do.

28. On the second issue, according to the documents presented in the trial court and in this Court by both parties, it is evident that the suit land was a portion of a larger parcel of land known as LR No. 11344 that had been granted by the Government of Kenya to Kayole Estate Limited in the year 1963. The original parcel measured about 5639 acres. In 1971, NCC purchased the entire parcel of land, and the transfer was registered on 22nd November 1971. In 1973 the Town Clerk of NCC applied for subdivision of the parcel of land into eight subdivisions. The suit land is therefore a subdivision of L.R No. 11344.

29. There is contestation regarding when DoD occupied the suit land. The appellant argued that DoD took possession and occupation thereof sometime in the year 1986, with the full knowledge of the NCC and the Commissioner of Lands. The respondent on the other hand claims to have purchased the land from Renton in the year 2001. Renton had been allotted the land by the Commissioner of Lands on 19th December 1999.

30. The appellant through Nassoro Alfani Mwamboga, Staff Officer II, produced various correspondence between DoD and other stakeholders, all related to the acquisition of the suit land by DoD. One of the documents produced before the trial court was an inter-office memo dated 24th April 1984 from the Chief of Logistics at DoD addressed to the Permanent Secretary, department of Defence, requesting the latter to engage the relevant stakeholders in the acquisition of land adjacent to the Embakasi Garrison said to belong to NCC for expansion purposes.

31. What followed the above-mentioned letter was a meeting held on 24th May 1984 attended by among others, representatives of DoD, NCC, the Lands Department of the National Government and the Survey Department to discuss the subject of acquisition of the suit land by DoD. On 22nd February 1996, the Permanent Secreatry, Ministry of Defence, wrote to the Commissioner of Lands requesting for the issuance of a deed plan in respect of the suit land, which DoD had already surveyed and fenced off sometime in the year 1986. The land was identified in survey plan folio 179 register number 18.

32. There is evidence in the form of correspondence confirming that several stakeholder meetings took place to discuss the intended acquisition of the suit land by DoD, culminating in a letter by the Commissioner of Lands to the Permanent Secretary, Ministry of Defence, dated 11th August 1999. In this letter, the Commissioner of Lands observed, inter alia, as follows:

> " 1. The Survey plan depicted as No. 179/18 is a consolidated plan of two parcels of land.
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> 2. It is a combination of both Government land and Nairobi City Council land.

3. The NCC portion is part of a larger parcel known as Kayole Estate which was purchased privately by the Council. The Grant of the land is still in force and out of it several parcels have been curved out by the Council and leased out. The subleases are registered against the Head Title.

4. We have been monitoring the excision activity by Nairobi City Council to ensure that your portion is not affected." (Emphasis added)

33. It is important to point out that four months from the date of the above noted letter by the Commissioner of Lands to the Permanent Secreatry, Ministry of Defence, and even after assuring DoD that the portion of land for which they had taken possession would not be affected by the excision activities of NCC, the Commissioner of Lands issued a letter of allotment of the suit land to Renton. He purported to have done so on behalf of NCC.

34. Although the Commissioner of Lands in his letter of 11th August 1999 acknowledged that the suit land belonged to a private entity, NCC, and was fully aware that DoD had taken full possession and occupation thereof and was intent on acquiring title over the same, still went ahead to allot the suit land to a private entity. The appellant contends, and we agree, that the Commissioner of Lands did not have power to allot the suit land to Renton. This was private property, owned by NCC and the Commissioner of Lands had no capacity to alienate it. Additionally, DoD was also in occupation of a portion thereof.

35. Section 2 of the *Government Lands Act (repealed)* defines the word 'unalienated' as follows:

> " Unalienated Government Land" means Government Land which is not for the time being leased to any other person, or in respect of which the Commissioner has not issued any letter of allotment."

36. The suit land was not unalienated government land within the meaning provided for in the Government Lands Act (repealed). This was private land, even long before NCC bought it in 1971. There is unassailable evidence that sometime in 1997 or thereabout NCC had entered into an arrangement with the Government of Kenya whereby NCC would allocate part of its land measuring 400 Hectares to DoD at an agreed consideration of Kshs.40,000,000.00 but it would appear that the agreed sum was not paid, hence the filing of Milimani ELC No. 282 of 2012 by NCC against the appellant and DoD seeking rescission of the letter of allocation dated 7th November 1997 and delivery of vacant possession of the land, or in the alternative, compensation in the sum of Kshs.61,500,000,000.00 being the market value as at May 2012.

37. The suit land, being a portion of private land owned by NCC, could not by any means have been termed as unalienated government land that could be allotted to Renton by the Commissioner of Lands. This Court in *Benja Properties Ltd v Syedna Mohammed Burhannudin Sahed & 4 Others [2015] eKLR*, held thus:

> " The legal effect of the registrations made in 1907 and 1911 was to convert the suit property at that time from un-alienated government land to alienated government land with the consequence that the suit land became private property and moved out of the ambit and confines of the Government *Land Act*. This made the suit property unavailable for subsequent allotment and alienation by the Commissioner of Lands or the President of Kenya. The appellant's title to the suit property was thus anchored on land that was not unalienated government land. We concur with the trial judge's finding that the suit land

having been owned privately was not GLA land, and was not available for alienation. Its alienation was illegal and void ab initio."

38. The Commissioner of Lands did not have authority in law to allot the suit land and therefore no valid interest on the same could be conferred upon Renton and subsequently to the respondent herein. The process leading to the acquisition of title by the respondent was flawed and tainted with an illegality.

39. Even if we were to entertain, for a second, the argument that the Commissioner of Lands had power and authority to alienate the suit land, it follows that all persons who were likely to be affected by such exercise of discretion, including DoD, ought to have been informed and be heard before the decisions was made. This Court in *Commissioner of Lands v. Kunste Hotel Ltd [1997] eKLR* stated thus:

> "...The appellant was exercising his statutory power under the Government Lands Act, when he decided to allot the subject plot to the interested party. The exercise of that discretion clearly affected the legal rights of Kunste Hotel Ltd. The exercise of that power was therefore judicial in nature and he was therefore obliged to hear all those who were likely to be affected by his decision (see, *Mirugi Kariuki v. A.G.*) Civil Appeal No. 70 of 1991 (unreported). It is, therefore, our view and we so hold, that the appellant should have consulted the hotel along with the other parties before he decided to allot the plot to the interested party."

40. Section 26 of the repealed *Land Registration Act* states as follows:

> "(1) The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by 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, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except-
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> (a) on the ground of fraud or misrepresentation to which the person is proved to be a party; or
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> (b) where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme."

41. It is evident that the allotment of the suit land to Renton was unlawful. On 25th April 2001 Renton wrote to the Commissioner of Lands and requested his approval to transfer the suit property "to our sister company, TORINO ENTERPRISES LIMITED." Consent was promptly granted and on the following day the respondent paid Renton a consideration of Kshs.12,000,000.00; stamp duty was paid, and the transfer registered in the name of the respondent. It follows, therefore, that the Certificate of Title issued to the respondent was an illegal document owing to the manner in which the suit land was acquired by Renton.

42. We have considered the provisions of section 26 of the *Land Registration Act* (repealed) in light of the provisions of Article 40 of the Constitution which guarantees protection of right to property and it is our considered view that the concept of indefeasibility of title is subject to Article 40 (6) of the Constitution which states that: "The rights under this Article do not extend to any property that has been found to have been unlawfully acquired." Guided by the provisions of Article 40 (6) of the Constitution, we hold that the concept of indefeasibility or conclusive nature of title is inapplicable to the extent that title to the suit land was unlawfully acquired. See *Denis Noel Mukhulo & Another v. Elizabeth Murungari & Another [2018] eKLR*.

43. Additionally, and without prejudice to the foregoing, as at the time the respondent purchased the suit land from Renton, DoD had already taken possession thereof, fenced it and put up various facilities thereon. The respondent must have known or ought to have known of this fact, if at all it was a diligent purchaser. The respondent, in the absence of evidence to the contrary, was not a diligent purchaser and cannot be termed as an innocent purchaser for value without notice. Consequently, the respondent was not entitled to the orders of restoration or compensation as decreed by the High Court.

44. In conclusion, we allow this appeal, set aside the trial court's judgment and substitute therefor an order dismissing the respondent's suit in the High Court. The respondent shall bear the costs of this appeal as well as costs in the High Court.

DATED AND DELIVERED AT NAIROBI THIS 4TH DAY FEBRUARY, 2022.

D. K. MUSINGA (P)

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JUDGE OF APPEAL

A.K. MURGOR

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JUDGE OF APPEAL

J. MOHAMMED

.....

JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR