



**Golden Lion Real Estate Company v Onunga & 6 others (Environment & Land  
Case 792 of 2015) [2024] KEELC 3262 (KLR) (11 April 2024) (Judgment)**

Neutral citation: [2024] KEELC 3262 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE 792 OF 2015**

**JA MOGENI, J  
APRIL 11, 2024**

**BETWEEN**

**GOLDEN LION REAL ESTATE COMPANY ..... PLAINTIFF**

**AND**

**JAMES ONUNGA ..... 1<sup>ST</sup> DEFENDANT  
FRANK LOGISTICS LIMITED ..... 2<sup>ND</sup> DEFENDANT  
ASHOK KUMAR SOOD ..... 3<sup>RD</sup> DEFENDANT  
CHIEF LANDS REGISTRAR ..... 4<sup>TH</sup> DEFENDANT  
HON. ATTORNEY GENERAL ..... 5<sup>TH</sup> DEFENDANT  
PHILLIPS INTERNATIONAL LIMITED ..... 6<sup>TH</sup> DEFENDANT  
CREDIT BANK LIMITED ..... 7<sup>TH</sup> DEFENDANT**

**JUDGMENT**

1. By a Plaint dated 17/08/2015, an Amended Plaint dated 26/09/2015 and an Amended Amended Plaint dated 11/11/2021, the Plaintiff herein sought for the following orders:
  - ii. A permanent injunction be issued restraining the Defendants either by themselves, their servants, workers, agents and/or employees from interfering, developing, trespassing, alienating, auctioning, selling, transferring or in any other manner dealing or disposing of the property known as L.R. No. 1/381 [I.R. No. 20011] otherwise known as the Blacky'z Lounge situated along Argwings Kodhek Road, next to Chaka Place opposite the Priory, Kilimani, Nairobi or any part thereof;
  - iv. A declaration that the purported transfer of title L.R. No. 1/381 [I.R. No. 200711] to Frank Logistics Limited on 9/05/2018 is illegal, null and void.



- v. A declaration that the purported charge of title L.R. No. 1/381 [I.R. No. 200711] in favour of the 7<sup>th</sup> Defendant is illegal, null and void.
  - iv. A mandatory injunction be and is hereby issued compelling the 4<sup>th</sup> Defendant to effect the cancellation of the purported title L.R. No. 1/381 [I.R. No. 200711] that is in the name of the 2<sup>nd</sup> Defendant.
  - iv. In the alternative, a mandatory injunction be and is hereby issued compelling the 2<sup>nd</sup> Defendant to transfer title L.R. No. 1/381 [I.R. No. 200711] known as the Blacky'z Lounge situated along Argwings Kodhek Road, next to Chaka Place opposite the Priory to the Plaintiff.
  - iv. In the event the 2<sup>nd</sup> Defendant fails to transfer L.R. No. 1/381 [I.R. No. 200711] known as the Blacky'z Lounge situated along Argwings Kodhek Road next to Chaka Place opposite the Priory to the Plaintiff within sixty (60) days from of the Order of this Court, the Deputy Registrar of the High Court be mandated to execute all necessary documents to effect the transfer of the Property to the Plaintiff.
  - iv. General damages.
  - xi. Costs of the suit with interest on (ix) at court rates from the date of judgement till payment in full.
  - xi. Any other relief that this Honorable Court deems fit.
2. The suit is opposed. The suit against the 1<sup>st</sup> Defendant was withdrawn. The 2<sup>nd</sup> Defendant entered appearance and filed a Defence dated 20/01/2022. I note that there is no appearance and no defence filed by the 3<sup>rd</sup> Defendant before the Court. The 4<sup>th</sup> and 5<sup>th</sup> Defendants entered appearance and file a Defence dated 9/12/2022 and the 6<sup>th</sup> and 7<sup>th</sup> Defendants entered appearance and filed a Defence dated 15/12/2021. The suit proceeded by way of viva voce evidence. The Plaintiff called one witness, the 2<sup>nd</sup> Defendant called two witnesses, the 4<sup>th</sup> and 5<sup>th</sup> Defendants called one witness and the 6<sup>th</sup> and 7<sup>th</sup> Defendants called one witness. The Plaintiff testified on 21/09/2022 and the Defence hearing proceeded on 16/10/2023 and 12/02/2024.

### **Plaintiff's case**

3. In summary, the Plaintiff asserts ownership of a property known as Land Reference Number 1/835, housing the 'Blackyz Lounge,' having purchased the same from Propco Limited in 2014. Despite being the registered proprietor, the Plaintiff averred that he faced invasion and subsequent claims of ownership by the 2<sup>nd</sup> Defendant, leading to legal disputes. He contended that Court orders were issued to prevent trespassing, yet the 2<sup>nd</sup> Defendant allegedly engaged in fraudulent activities, including forgery and misrepresentation, to transfer ownership and secure a charge with the 7<sup>th</sup> Defendant. Additionally, he contended that collusion between the 2<sup>nd</sup> and 4<sup>th</sup> Defendants further complicated matters, culminating in contempt of court through unauthorized property transfers and charges.
4. The Plaintiff listed the particulars of fraud on the part of the 2<sup>nd</sup> Defendant as follows: Forgery or causing to be forged the Certificate of Title Grant Number I.R. 67070 over the suit property in an attempt to disposes the Plaintiff of the suit property, altering and/or misrepresenting the Land Reference Number 1/835 to be identified as L.R. No. 1/381 /I.R No. 200711 while referring to the Blacky'z Lounge situated along Argwings Kodhek Road, next to Chaka Place opposite the Priory, while knowing the existence of a court order barring any dealings on the Property, willfully causing the Property, Blacky'z Lounge situated along Argwings Kodhek Road, next to Chaka Place opposite the Priory to be registered in its name as Title Number L.R. No. 1/381 [I.R. No. 200711] while



knowing the Plaintiff has absolute ownership of claim in the Property, Altering or misrepresenting Land Reference No. 1/835 to be identified as L.R. No. 1/381 [I.R No. 200711] with intention to secure a charge to a sum of Kshs. 90, 000,000 with the 7<sup>th</sup> Defendant, knowingly misrepresenting its ownership and title to the Property to the 7<sup>th</sup> Defendant who charged it to secure a sum of Kshs. 90,000,000 and Interfering with the Plaintiff's quiet enjoyment and possession of the Property.

5. The Plaintiff listed the particulars of fraud on the part of the 4<sup>th</sup> Defendant as follows: Collusion with the agents of the 2<sup>nd</sup> Defendant to alter L.R No. 1/835 situated along Argwings Kodhek Road, Kilimani next to Chaka Place opposite the Priory to L.R No. 1/381 [I. R No. 200711], collusion with the 2<sup>nd</sup> Defendant to register L.R No. 1/381 in favour of the 7<sup>th</sup> Defendant on 9/05/2018 and Collusion with the 2<sup>nd</sup> Defendant and/or the 7<sup>th</sup> Defendant to register a Charge on land L.R. No. 1/381, the Blacky'z Lounge situated along Argwings Kodhek Road, next to Chaka Place opposite the Priory.

### **Evidence by the Plaintiff**

6. PW1 – Tang Jia Rong testified that he is the director of the Plaintiff Company. He adopted his witness statement dated 17/08/2015 and relied on their list and bundle of documents dated 4/07/2022 together with a supplementary bundle dated 28/10/2021 as his evidence in chief. They were marked as PW1-Exh from page 1-53 of the Plaintiff's bundle.
7. During cross-examination, the plaintiff's director testified that he was evicted from the property in August 2014, with the eviction reported to the police, although no documentation was provided before the Court. Buildings appeared on the property after his eviction in August 2015. He purchased the property from Propco Ltd and provided documents to his advocate, who confirmed the title's authenticity. PW1 admitted that he did not conduct a pre-sale search but paid stamp duty and believed his title (LR 1/835) to be legitimate. He alleged fraudulent use of his title by the 2<sup>nd</sup> defendant to obtain credit. The plaintiff obtained a court order against Frank Logistics but failed to register it with the Registrar of Lands.
8. During re-examination, he confirmed the dates of the property invasion and legal actions, submitted photographs of the property, and provided details about his advocate's attempts to verify ownership at the land registry. He also testified that he discovered his property's auction in a newspaper, leading him to apply for a caution to be placed on the property with the registrar and provided the court order as evidence.
9. With that evidence, the Plaintiff closed his case.

### **Defendants' case**

#### **2<sup>nd</sup> Defendant**

10. The 2<sup>nd</sup> Defendant entered appearance and filed a defence dated 20/01/2022. The 2<sup>nd</sup> defendant denies each and every allegation made in the amended plaint. In summary, the 2<sup>nd</sup> Defendant averred that it is the registered proprietor of all that property known as L.R. No.1/1381 original number 1/835 as is a stranger to the land Reference Number 1/835 (original 225/5) being alluded to by the plaintiff.
11. The 2<sup>nd</sup> Defendant states that in any event if the Plaintiff paid any money to Propco Limited then the transaction was not in relation to the 2<sup>nd</sup> Defendant's piece of land and it is only Propco Limited that can be answerable or liable to the Plaintiff.



12. The 2<sup>nd</sup> Defendant states that it is a stranger to the alleged invasion and fraud being alleged by the Plaintiff. He denies the allegations that the property on the 6<sup>th</sup> Defendant's Notice of 20/09/2021 matched with the exact physical location of the Plaintiff's property. The 2<sup>nd</sup> Defendant denies each and every allegation at Paragraph 24 and 25 of the Plaintiff and further states that it is a stranger to the allegations of invasion and fraud being alluded to by the Plaintiff.

#### **4<sup>th</sup> and 5<sup>th</sup> Defendants**

13. The 4<sup>th</sup> and 5<sup>th</sup> Defendants entered appearance and filed a defence dated 9/12/2022. The 4<sup>th</sup> and 5<sup>th</sup> defendants deny the allegations of facts in the Amended Amended Plaintiff dated 11/11/2021. The 4<sup>th</sup> and 5<sup>th</sup> defendants deny the corporate status of the Plaintiff. The 4<sup>th</sup> and 5<sup>th</sup> Defendants deny the allegations of fraud and collusion as against the 4<sup>th</sup> Defendant as particularized in paragraphs 26 and 27 of the Amended Amended Plaintiff. Further to the contents of paragraph 5 of the Defence, the 4<sup>th</sup> and 5<sup>th</sup> Defendants state as follows in respect of the suit property:

#### **6<sup>th</sup> and 7<sup>th</sup> Defendants**

14. The 6<sup>th</sup> and 7<sup>th</sup> Defendants entered appearance and filed a defence dated 15/12/2021. The 6<sup>th</sup> and 7<sup>th</sup> Defendants deny each and every averment contained in the Amended Amended Plaintiff dated 11/11/2021.
15. In summary, the 6<sup>th</sup> and 7<sup>th</sup> Defendants contest their inclusion in the lawsuit, arguing that the 6<sup>th</sup> Defendant acts as an agent of the 7<sup>th</sup> Defendant. They assert that no cause of action exists against them. The 7<sup>th</sup> Defendant denies knowledge of the property in question, asserting a distinct property reference and detailing a loan transaction with the 2<sup>nd</sup> Defendant. Despite legal proceedings related to the property, the 7<sup>th</sup> Defendant proceeded with a public auction after default by the 2<sup>nd</sup> Defendant, citing statutory measures and valuation reports to justify its actions. The 6<sup>th</sup> and 7<sup>th</sup> Defendants reject allegations of fraud and collusion, emphasizing their due diligence before registering a legal charge over the property. They maintain that the Plaintiff's claims lack merit and seek to be removed from the suit.

#### **Evidence by the Defendants**

16. DW1 – Francis Nyaga Njeru adopted his witness statement dated 23/02/2022 and relied on a list and bundle of documents dated 23/02/2022 as his evidence in chief.
17. During his testimony, the DW1 stated that their tenant occupied the disputed land and that he is the one who undertook its development. In cross-examination, he claimed ignorance of an injunction issued on 27/01/2017, questioning its basis as they were in occupation and disputing the completeness of the presented title document. He highlighted discrepancies in dates and documents related to the transfer to Frank Logistics and the change of user application, emphasizing the timing in relation to the plaintiff's claims and the court injunction. He affirmed the property's charging to the 7<sup>th</sup> defendant and his role in securing a loan facility using the property as security. Additionally, he asserted his long-standing ownership of the property since 2014, supported by his due diligence and acquisition of titles. During re-examination, he reaffirmed the authenticity of his documents and denied conducting the search referenced by the plaintiff.
18. DW2 – Edward Shylock Ndege Omwega adopted his witness statement dated 22/02/2022 and relied on the same as his evidence in chief. It is his testimony that he sold the suit property to Frank Logistics Ltd. He confirmed that he signed the transfer on 21/01/2015.



19. During cross-examination, the DW2 testified about discrepancies in the title grant number and transfer dates, indicating transfers to him and Frank Logistics occurred in 2017, contradicting claims of ownership in 2015. He highlighted variations in document dates and inconsistencies in the transfer process. DW2 stated that paragraph 5 of his witness statement talks about an injunction but he was not aware that the plaintiff moved to court. He confirmed an agreement with Ashok and his possession of the property in January 2011 but claimed no knowledge of the plaintiff or their occupation of the property. He testified that he was not aware that the 3<sup>rd</sup> defendant had sworn an affidavit still claiming to be owners of suit property though a representative claimed that Ashok died on 15/09/2011.
20. In re-examination, DW2 reiterated his possession of the property since 2011, clarifying that although the transfer occurred in 2017, he had ownership prior to that date despite the discrepancy in transfer timing.
21. With that evidence, the 2<sup>nd</sup> Defendant closed his case.
22. DW3 – Wainaina Francis Ngaruiya testified that he is currently the head of legal at Credit Bank. He adopted his witness statement dated 15/12/2021 and relied on the 6<sup>th</sup> and 7<sup>th</sup> Defendants’ list and bundle of documents dated 15/12/2021 as his evidence in chief.
23. During cross-examination, DW3 stated that LR 1/835, as mentioned in paragraphs 4 and 20, was not recognized by the bank, contrasting with documents indicating LR 1/381. Despite an order halting transactions on the property, an advertisement with a different LR number was dated after this order, suggesting discrepancies. The bank confirmed conducting due diligence on the presented title but didn’t address the change of user. No survey report confirming the plaintiff’s parcel was provided, nor letters clarifying ownership authenticity. DW3 emphasized the land registrar’s office as the authority on ownership clarification. The bank’s due diligence identified Frank Logistics as the owner, supported by a post-registration search and ongoing charge registration. In re-examination, DW3 reiterated that the plaintiff’s claim pertained to LR 1/835, distinct from the property charged to the bank.
24. With that evidence, the 6<sup>th</sup> and 7<sup>th</sup> Defendants closed their case.
25. DW4 – Charles Kipkurui Ng’etich testified that he is a deputy Chief Land Registrar stationed in Kehancha, Migori County. He adopted his witness statement dated 8/12/2022 and relied on it as his evidence in chief.
26. During cross-examination, DW4 admitted that the records he referred to were not presented to the Court. He acknowledged discrepancies between the plaintiff’s property registered under GLA and the 2<sup>nd</sup> defendant’s claim under RTA. He testified that he assures the court that the property was registered under RTA. He is not aware that the plaintiff’s property was registered under GLA. His statement begins by assuming the 2<sup>nd</sup> defendant’s position is right and he was involved in the transfer of the said property to the 2<sup>nd</sup> defendant though he did not see the transfer document. Documents from the plaintiff’s bundle indicated sequential numbering and were not found in his searches, casting doubt on their association with the property. DW4 emphasized the need for a sale agreement, stamp duty receipts, and application for postal searches, which were not presented before the Court. He highlighted inconsistencies in the document’s drafting, suggesting a transfer before the court was consistent with the one under Cap 281 rather than GLA. DW4 affirmed that he had not encountered the plaintiff’s documents, suggesting they were not available as of 9/12/2022.
27. In re-examination, DW4 reiterated that he had not come across the plaintiff’s documents, asserting they were not present as of 9/12/2022, while only documents favoring the 2<sup>nd</sup> defendant were available.
28. With that evidence, the 4<sup>th</sup> and 5<sup>th</sup> Defendants closed their case.



## Written submissions

29. The Court gave directions on filing of written submissions on 12/02/2024. By the time of writing this Judgment, it is only the Plaintiff who had duly submitted and I have considered them. The Plaintiff filed written submissions dated 6/03/2024.

## Issues for Determination

30. Having considered all the pleadings filed in this matter, the following arises as the issues for determination before this Court: -
- a. Whether the plaintiff is the proprietor of the suit property.
  - b. Whether the registration of the 2<sup>nd</sup> defendant as the proprietor of the suit property was lawful.
  - c. Whether the Plaintiff is entitled to the prayers sought.
  - d. Who should bear the costs of the suit?

## Analysis and Determination

### Whether the Plaintiff is the lawful proprietor of the suit property?

31. 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 can be deprived of his property except in accordance with the provisions of *the Constitution* or Statute. The condition precedent to taking away anyone's property is that the authority must ensure compliance with *the Constitution* and Statutory provisions.
32. It is common ground that land is an extremely precious commodity in Kenya and the insatiable appetite for the same has been there for decades. People go to great lengths often resulting to unorthodox and illegal means to own this precious commodity.
33. In order to answer this question, I will interrogate the processes culminating to the issuance of the conveyance and certificate of title to the 2<sup>nd</sup> Defendant, the conversion from one registration regime to another, the documents produced and the law governing allocation of land.
34. I am guided by the decision in the case of *Munyu Maina v Hiram Gathitha*, civil appeal number 239 of 2009 and referred to in *Mbiiri Kamau (representing ACK Kitharaini Church, the church Commissioners for Kenya Trustees of the Anglican Church of Kenya) v Munyangia Njoka & 2 others* [2021] eKLR the Court of Appeal stated thus;
- “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 would not be noted in the register.”
35. Regrettably, the government departments who were parties to this suit and who in my view were important players in the process culminating to the of acquisition the suit property chose not to tender evidence. DW4 testified that the documents he relied on when giving his statement were not before the Court. This was very questionable noting that the Deputy Chief Land Registrar was a crucial witness



in this case and him giving highlights of the history of the suit property herein as per the records in their custody as the sole custodians of land records was key. The evidence would have been very useful to the court. I note however that DW4 testified that the Plaintiff's documents did not form part of the records held by Ministry of Lands.

36. I am faced with two parties laying claim to the suit property.
37. The Plaintiff begins his story by contending that he purchased LR No. 1/835 under GLA in 2014 and the transfer of title from Propco Limited to the Plaintiff was registered at the Government Lands Registry at Nairobi as Volume N112 Folio 136/31 File Number 11933. The transfer that was produced by the Plaintiff provided that the form of transfer was adopted from Form F of the Registration of Titles Act (Cap 281) (Now Repealed) pursuant to Section 108 of the Land Registration Act 2012 to conform with the Land Registration Act 2012 and the Land Act 2012 for use in connection with land registered under the Government Lands Act (Cap 280) (Now Repealed).
38. The Plaintiff's director testified and produced documentary evidence to show that he was registered as the owner of the suit property pursuant to a conveyance dated 13/11/2014 registered as Volume N112 Folio 136/31 File 11933. This conveyance was from Propco Limited for a consideration of USD \$ 2,300,000.00. The property conveyed to the Plaintiff by the said Propco Limited is described in the conveyance as "..... ALL THAT piece of land situate in the City of Nairobi in the Nairobi Area of the Republic of Kenya comprising by measurement Nought decimal one eight nine six (0.1896) of a hectare or thereabouts known as Land Reference Number 1/835 (Original Number 1/225/5) which said piece of land with the dimensions abuttals and boundaries thereof is more particularly delineated on Land Survey Plan Number 104399 deposited in the Survey Records Office at Nairobi aforesaid and thereon bordered red.."
39. The abstract of folio 136/31 of Volume N112 held by the Government Land Registry, Nairobi which was produced in evidence by the Plaintiff shows one transaction affecting the suit property. It shows that Presentation No. 2158, Volume N112 Folio 136/31 File 11933 was registered on 21/04/2015 at 13.45hrs.
40. The Plaintiff also produced a certificate of postal search as at 15/09/2015 furnished by the registrar of government lands. The certificate of postal search shows that the Plaintiff, Golden Lion Real Estate Company Limited is the current registered proprietor of a fee simple interest in respect of LR No. 1/835 (Orig. No. 1/225/5) and is registered on the register Vol. N112 Folio 136 File 11933. This registration tallies with the registration of the Plaintiff's conveyance dated 13/11/2014 and the registration of the Plaintiff's conveyance at page 26 & 29 of the Plaintiff's documents.
41. On the basis of the evidence adduced by the plaintiff and the documentary evidence the plaintiff tendered I am satisfied that the Plaintiff was on 21/04/2015 registered as the owner and proprietor of L.R. No. 1/835(Orig. No. 1/225/5). The conveyance to the plaintiff on the face of it was properly executed, stamped and registered and by virtue of the registration as owner the plaintiff became the absolute and indefeasible owner of the suit property.
42. I am aware that properties registered under the repealed Government Lands Act Cap 280 where no certificates of title are issued, title to property as relates to GLA titles is evidenced by the production of the last conveyance and/or instrument. Consequently, under the GLA land regime, the above mentioned was sufficient to prove ownership.
43. In the instant case, it is incumbent that the 2<sup>nd</sup> Defendant proves that the land registration was converted to RTA to support his claim for ownership as the same land cannot have two titles in two different regimes.



44. It is this court's considered humble view that conversion of titles is an administrative function that vests on the Cabinet Secretary for Lands and other designated officers. The promulgation of the 2010 Constitution heralded the introduction a number of changes in transactions relating to land through a number of statutes. Among them was the consolidation of the previous land regimes of registration to one regime to govern all. Thus, with the enactment of the Land Registration Act, Act No. 3 of 2012, all land regimes including Government Land Act, Registration of Titles Act, Land Titles Act and the Registered Land Act were consolidated and are now governed by the Land Registration Act.
45. Section 6 of Land Registration Act provides as follows:
- “(1) for the purposes of this Act, the Cabinet Secretary in consultation with the Commission and the county governments shall, by order in the Gazette, constitute an area or areas of land to be a land registration unit and may at any time vary the limits of any such units.
  - (2) ....
  - (3) .....
  - (4) The office or authority responsible for land survey may, at any time, cause registration sections or blocks to be combined or divided, or cause their boundaries to be varied, and immediately inform the Registrar of the changes.
  - (5) Any order by the Cabinet Secretary under this section shall be published in the gazette and in at least two daily newspapers of nationwide circulation.”
46. From the above provision, it is clear that the Cabinet Secretary for the time being in charge of the Ministry of Land and Physical Planning is vested with the power and authority to carry out any conversion of land from one regime to another. Concisely, the Cabinet Secretary identifies land suitable to be registered as registration units, then, directs the Office of Survey to carry out survey and prepare cadastral maps on it in preparation for conversion, thereafter, gazettes the registration unit and causes it to be published in two daily newspapers of nationwide circulation, if there are objections to any details given, they are attended to by the Registrar before converting the titles and issuing new ones to the registered proprietors as provided for by the Land Registration Units Order of 2017.
47. The 2<sup>nd</sup> Defendant's director gave evidence on his acquisition process. The 2<sup>nd</sup> Defendant's claim to the suit property is on the basis of purchase of LR No. 1/1381, vide a sale agreement, sometime in 2014 from the owner one Edward Shylock Omwega Ndege. That after completion of payment in 2015, the Vendor who had not transferred the land into his name transferred it into his name after receipt of the entire purchase price before transferring the said land to the 2<sup>nd</sup> Defendant as can be observed from the title documents.
48. The 2<sup>nd</sup> Defendant led evidence of the purchase by providing a transfer dated 24/01/2011 of LR No. 1/835 from the 3<sup>rd</sup> Defendant (Ashok Kumar Sood) who sold to Edward Shylock Omwega Ndege, transfer dated 21/01/2015 of LR No. 1/835 from Edward Shylock Omwega Ndege to the 2<sup>nd</sup> Defendant, a copy of the original title before change of user, application for change of user, lease, certificate of title after change of user, rates payment receipts and clearance certificate, rent clearance certificate, change of user in the standard newspaper of 7/07/2016, county minutes on change of user, gazette notice of 31/12/2020, a search dated 31/10/2019 among other documents.
49. The Court has perused and reviewed the 2<sup>nd</sup> Defendant's documents purporting to explain the root of title of the 2<sup>nd</sup> Defendant as registered as owner of the suit property. The 2<sup>nd</sup> Defendant contended that



he started the process of purchasing LR No. 1/1381 sometime in 2014 from Edward Shylock Omwega Ndege and paid in installments until the whole of the purchase price was cleared in the year 2015.

50. This property appears to be different from the one registered in the Plaintiff's name but the Court record shows that LR No. 1/835 (Original No. 225/5) and LR No. 1/1381 are the same property. The Court has observed that the property said to have been transferred to the 2<sup>nd</sup> Defendant by one Edward Shylock Omwega Ndege is Grant IR 67070 for LR No. 1/835, land survey plan no. (deed plan) 104399 measuring 0.1896 Ha. Therefore, this shows that this property is similar to the one registered in the Plaintiff's name.
51. DW4, the Deputy Chief Land Registrar did testify and acknowledge discrepancies between the plaintiff's property registered under GLA and the 2<sup>nd</sup> defendant's claim under RTA. It was his testimony that the property was registered under RTA however he did not produce the documents in which are under his custody before the Court. He testified that he was not aware that the plaintiff's property was registered under GLA.
52. From the record before me, the Plaintiff's property is registered as LR No. 1/835 measuring 0.1896 Ha. Somewhere in between this property referred to as LR No. 1/835 became LR No. 1/1381 (I.R 200711) measuring 0.1896 Ha which was later converted to 693 after the change of user as per Gazette Notice No.242 dated 31/12/2020. However, the Court notes that no evidence has been tendered to show that the registration regime was changed from GLA to RTA. No conversion of the legal regime of the suit property to RTA from GLA was established by the 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants.
53. It is my considered view that the 2<sup>nd</sup> Defendant's title was procured unprocedurally as there was no conversion of title. The Court is guided by the provisions of Section 108 and 109 of the *Evidence Act*. The 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants failed to tender any evidence to that effect leads to the conclusion that there was such conversion of the legal regime to RTA from GLA and therefore it is my view that no title could have been registered under RTA.
54. The Court of Appeal in Philemon L. Wambia V Gaitano Lusitsa Mukofu & 2 Others [2019] eKLR quoted with approval the case of Solomon Omwega Omache & Another –V- Zackery O. Ayieko & 2 Others (2016) eKLR where it was stated that the court has the duty to uphold the sanctity of the record at the Lands office.
55. In this suit, the Plaintiff produced a transfer of title together with an abstract of the folio from the Government Lands Registry. There is no evidence that the registration was never done nor they were fraudulent. The only allegation was that the Plaintiff's documents did not form part of the Lands records. DW4, the Deputy Land Registrar only maintained that they had the 2<sup>nd</sup> Defendant's documents. In my view, this is insufficient evidence. The 2<sup>nd</sup> Defendant also failed to prove that the suit property was converted from GLA to RTA which would have explained how he holds a title under RTA in land registered under GLA.
56. In the end, on the basis of the evidence tendered by the parties in the suit and evaluation of the documents, I am satisfied that the plaintiff has established and proved that as at 9/05/2018 when the 2<sup>nd</sup> Defendant was registered as proprietor of the suit property, the Plaintiff held a valid title to the suit property which was duly registered. The registration of the 2<sup>nd</sup> Defendant as proprietor was in my view unlawful and irregularly obtained.

Whether the registration of the 2<sup>nd</sup> defendant as the proprietor of the suit property was lawful

57. I said earlier and I say again, that it is not enough to wave a document of title without telling the story leading to acquisition of land. This story must also be backed with documentary evidence that is



- credible and legal. There are two different documents of title (certificate of title and a transfer), issued to two people and at different times. The government supports the documents produced by the 2<sup>nd</sup> Defendant on grounds that those are the documents as per their records. But the records kept by the Ministry of Lands were not produced before the Court.
58. The Court already found that the 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants failed to adduce evidence demonstrating the land regime conversion from GLA to RTA. Regardless of this finding, it is this Court's observation that there are some discrepancies with the evidence produced by the 2<sup>nd</sup> Defendant.
59. The 2<sup>nd</sup> Defendant adduced the original title (before change of user), Grant IR 67070 for LR No. 1/835, land survey plan no. (deed plan) 104399 as evidence before the Court. The said title is not so clear but it was registered to one F.H. Osmond of P.O Box 48970. It also appears to be incomplete as (b) the provisions of the GLA and (c) the special conditions of the grant only begin from number 14. The stamp appearing below the Commissioner of Lands' signature canceled out registration I.R No. 67070/1 and added 64342. I am no signature expert but there's a mark next to the amendment that looks like a signature confirming the said amendment. Does this mean that this page of the title which conveniently starts at Special condition no. 14 is for IR No. 64342 and not I.R No. 67070/1?
60. The Plaintiff's counsel also submitted that the Defendants' witnesses, including Mr. Ng'etich, confirmed that this third page relates to a property whose description is I.R No. 6432. Counsel also pointed out that the first page of that title document indicates that the IR No. is 67070 and not 64342. This Court is in agreement with the Plaintiff's counsel's submission that there is no demonstrable connection between the third page of document no. 3 in the 2<sup>nd</sup> Defendant's list of documents and the purported first and second pages of that same document. They relate to different properties. It is not simply a question of document no. 3 referring to the same property but only having some missing pages, on the contrary, it is a question of document no. 3 referring to different properties. To the plaintiff's counsel, that document records the transfer of a property described as I.R No. 64342 to the 3<sup>rd</sup> Defendant then to Edward Ndege and finally to the 2<sup>nd</sup> Defendant. I agree.
61. The entry that follows is entry no. 2 which indicates transfer to the 3<sup>rd</sup> Defendant was registered on 1/04/1994. Entry no. 3 indicates transfer to Edward Shylock Omwega Ndege was registered on 2/03/2017. Entry no. 4 indicates transfer to the 2<sup>nd</sup> Defendant was registered on 2/03/2017.
62. The 2<sup>nd</sup> Defendant produced a transfer document dated 24/01/2011 between the 3<sup>rd</sup> Defendant and Edward Shylock Omwega Ndege for title number I.R No. 67070/1. The transfer was registered on 2/03/2017. I note that the Registrar's stamp indicates that the IR No. is 67070/3.
63. Two things, firstly, the 3<sup>rd</sup> Defendant did not indicate the date in which he executed the document. It has been revealed to the Court that the 3<sup>rd</sup> Defendant had passed away. DW2, Edward Shylock Omwega Ndege testified that he was not aware that the 3<sup>rd</sup> Defendant had passed away on 15/09/2011 but by that time, he had sold the property to him, DW2. He only maintained that he had an agreement with the 3<sup>rd</sup> Defendant and he took possession in January 2011. Secondly, no explanation was advanced as to why registration of the transfer was done 6 years on 2/03/2017 after the purported transfer. The Court had issued orders on 27/01/2017 prohibiting any dealings on the land pending the hearing and determination of the suit in the presence of counsels. DW1, the 2<sup>nd</sup> Defendant herein acknowledged that Justice Githumbi had issued orders of injunction on 27/01/2017. He feigned that he was not aware of the same as he was not served with the order but the record shows that the said order was given in the presence of counsels and the 2<sup>nd</sup> Defendant was a party to this suit at that time.
64. The transfer between dated 21/01/2015 Edward Shylock Omwega Ndege and the 2<sup>nd</sup> Defendant was registered on 2/03/2017. I note that the Registrar's stamp indicates that the IR No. is 67070/4. DW2,



- Edward Shylock Omwega Ndege conceded that at page 4, it shows that the transfer to him is dated 2/03/2017, then the stamp of transfer to 2<sup>nd</sup> Defendant shows that it was registered on 2/03/2017. That according to the transfer stamp, it means he did not own the property in 2015 as alleged by DW1. The Plaintiff's counsel submitted and pointed out that both transfers were valued on the same day i.e., 22/02/2017. The same property was purportedly valued at Kshs. 70 million and Kshs. 130 million on the same day. Counsel submitted that this casts serious doubts on the legitimacy of those documents.
65. The 2<sup>nd</sup> Defendant entered into a lease agreement dated 1/07/2016 with one, Abaye Tesfu Negussie in respect of Grant Number I.R 170469/1. It refers to the suit property as LR No. 1/835 registered as I.R 67070/1 measuring 0.1896 and Deed Plan No. 104399.
66. I also note that the 2<sup>nd</sup> Defendant produced Gazette Notice No. 242 dated 31/12/2020 which was a notification of conversion of LR No. 1/1381 to Parcel No. 693 at page 5265. Once again, there is no evidence before me that demonstrated at what point the suit property, LR No. 1/835 was converted and acquired a new title number, LR No. 1/1381.
67. I could go on and on but I believe I have said enough. In summary, the 2<sup>nd</sup> Defendant testified that he purchased the suit property since 2014. He visited the property in 2013. He was taken to the property by Mr. Ndege. He carried out due diligence which showed the owner was Shylock Omwega Ndege. It was his evidence that the title has never been recalled by the Chief land registrar. He received another title registered on 9/05/2018 and even that one has never been recalled.
68. The suit property was purportedly transferred to the 2<sup>nd</sup> Defendant on 21/01/2015 and registered on 2/03/2017. There is no sale agreement between Edward Shylock Omwega Ndege and the 2<sup>nd</sup> Defendant produced before me. It was the 2<sup>nd</sup> Defendant's case that he paid for the suit property in installments. This has not been demonstrated. The Application for change of user was done on 7/03/2016 whereas the transfer to the 2<sup>nd</sup> Defendant was registered on 2/03/2017. A registered and practicing planner, one Weyusia Zinny stamped and signed the application on 13/07/2016. The Application indicates the owner of LR No. 1/835 is the 2<sup>nd</sup> Defendant. The change of user was approved on 15/07/2016. The Nairobi City County, City Planning Department signed the Approval on 16/08/2016. All these transactions took place before the 2<sup>nd</sup> Defendant's transfer was registered. The 2<sup>nd</sup> Defendant was thereafter issued with a lease to LR No. 1381 pursuant to the change of use on 7/05/2018 and a certificate of title of Title No. I.R 200711, LR No. 1/1381 (Original Number 1/835) on 9/05/2018. The suit property was also purportedly charged to the 7<sup>th</sup> Defendant on 13/02/2019.
69. In light of the glaring discrepancies, this Court finds and holds that the title held by the 2<sup>nd</sup> Defendant is in conflict with the legal regime under which the suit property was held and registered. The 2<sup>nd</sup> Defendant's title is ripe for cancellation. The 2<sup>nd</sup> Defendant's proprietorship being unlawful and irregularly obtained, the procedure for cancellation of title is provided for under Section 80 of the [Land Registration Act](#), 2012. It is as follows;
- 80(1) Subject to subsection (2), the court may order rectification of the register by directing that any registration be cancelled or amended if it is satisfied that any registration was obtained, made or omitted by fraud or mistake.
- (2) The register shall not be rectified to affect the title of a proprietor who is in possession and acquired the land, lease or charge for valuable consideration, unless such proprietor had knowledge of the omission, fraud or mistake in consequence of which the rectification is sought, or caused such omission, fraud or mistake or substantially contributed to it by any act, neglect or default.



70. Once again, it is now clear, from the summary somewhere hereinabove, there is a procedure to be followed when converting titles from one regime to another. I already found that the 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants failed to adduce evidence demonstration the land regime conversion from GLA to RTA. In addition to this finding, I have observed that there are discrepancies with the evidence produced by the 2<sup>nd</sup> Defendant and I have stated them hereinabove. It is my considered view that the issuance of the 2<sup>nd</sup> Defendant's title was un-procedural, illegal, null and void.
71. I have deliberately failed to address myself on fraud as pleaded by the Plaintiff. It was not proved.
72. From the foregoing, I find that the Plaintiff has been able to prove on balance of probability that he legally obtained the document of title to the suit property. He therefore has proprietary rights in it, is the legal owner and should be allowed to take possession and enjoy it without any interference.
73. Before I conclude this judgment, I acknowledge that the Plaintiff in his Amended Amended Plaintiff sought and prayed for award of general damages but during the trial the Plaintiff did not adduce any evidence and or lay any basis to support the claim that he suffered any damages. In the result I took it that the Plaintiff abandoned the quest for damages and will not make any consideration and/or findings on this prayer there being no basis upon which I can so do.
74. On costs, Section 27 of the *Civil Procedure Act* gives the Court the discretion to grant costs. It is trite that costs usually follow the events. The Plaintiff is the successful party and is therefore entitled to costs.
75. In light of the foregoing, this Court finds that the evidence on record is sufficient to prove that the Plaintiff is the bona fide owner of the property known as LR No. 1/835 (Original No. 1/225/5). The Plaintiff is therefore entitled to the orders sought in the Amended Amended Plaintiff.
76. In the premises and by reason of all the reasons given above, this Court is satisfied that the Plaintiff has proved his case on a balance of probabilities. Accordingly, judgment is entered for the Plaintiff as follows: -
  - a. The Plaintiff is hereby declared to be the lawful registered owner of LR No. 1/835 (Original Number 1/225/5).
  - b. An order of permanent injunction is hereby issued restraining the Defendants either by themselves, their servants, workers, agents and/or employees from interfering, developing, trespassing, alienating, auctioning, selling, transferring or in any other manner dealing or disposing of the property known as L.R. No. 1/381 [I.R. No. 20011] otherwise known as the Blacky'z Lounge situated along Argwings Kodhek Road, next to Chaka Place opposite the Priory, Kilimani, Nairobi or any part thereof.
  - c. A declaration is hereby issued that the purported transfer of title L.R. No. 1/381 [I.R. No. 200711] to Frank Logistics Limited on 9/05/2018 is illegal, null and void.
  - d. A declaration is hereby issued that the purported charge of title L.R. No. 1/381 [I.R. No. 200711] in favour of the 7<sup>th</sup> Defendant is illegal, null and void.
  - e. A mandatory injunction is hereby issued compelling the 4<sup>th</sup> Defendant to effect the cancellation of the purported title L.R. No. 1/381 [I.R. No. 200711] that is in the name of the 2<sup>nd</sup> Defendant.
  - f. The 2<sup>nd</sup> Defendant, their agents and servants are directed to vacate and deliver vacant possession of land parcel L.R. NO. 1/835 (Original Number 1/225/5) to the Plaintiff forthwith failing which eviction to issue on application.



g. The Plaintiff shall have the costs of the suit.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 11<sup>TH</sup> DAY OF APRIL 2024.**

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**MOGENI J**

**JUDGE**

**In the virtual presence of:**

Mr . Gabriel Mwangi for the Plaintiff

Mr. Omondi holding brief for Mr. Were for the 2<sup>nd</sup> Defendants

Mr. Mugisha for 6<sup>th</sup> and 7<sup>th</sup> Defendants

Mr. A Kamau for the 4<sup>th</sup> Defendant

None appearance for the 1<sup>st</sup>, 3<sup>rd</sup>, and 5<sup>th</sup> Defendants

Ms. C. Sagina: Court Assistant

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**MOGENI J**

**JUDGE**

