IN THE COURT OF APPEAL

AT NAIROBI

(CORAM: MAKHANDIA, GATEMBU & M'INOTI, JJ.A.)

CIVIL APPEAL NO. 349 OF 2012

BETWEEN

CHEMEY INVESTMENT LIMITED..APPELLANT

AND

ATTORNEY GENERAL..1STRESPONDENT

PERMANENT SECRETARY, MINISTRY OF HEALTH..........2ND RESPONDENT

ETHICS & ANTI-CORRUPTION COMMISSION..................3RD RESPONDENT

(Appeal from the judgment and decree of the High Court

of Kenya (Majanja, J.) dated 19th December 2011

in

HC Misc. App. No. 94 of 2005 (OS))

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JUDGMENT OF THE COURT

There was a time in the history of this country, not too long ago, when public officers appeared to have been bitten by a bug that infested them with a malignant and shameless craving to acquire for themselves, their friends or relatives, public property in respect of which they were trustees or custodians. This appeal is a throwback to those days. ***The appellant, Chemey Investment Limited***, a limited liability company contends that the respondents, namely, the ***Attorney General, the Permanent Secretary (now the Principle Secretary) for Health*** and ***the Ethics Anti-Corruption Commission***, violated with impunity its constitutional right to property when they evicted it from a parcel of land known as ***Eldoret Municipality/Block 4/57 (the suit property)*** and installed ***Uasin Gishu District Hospital*** thereon. The respondents on the other hand, maintain that at all material times the suit property was public property and the appellant's purported title thereto was fraudulently acquired, is tainted by fraud to which the appellant was party, and is therefore not protected by the Constitution or laws of this land. The High Court ***(Majanja, J.)*** agreed with the respondents in his judgment dated 19th December 2011, which the appellant is challenging in this appeal, and declined to issue orders to restore possession of the suit property to the appellant.

Between 1995 and 1998, the suit property was the subject of a quick succession of transfers that saw it change hands from the Government to private hands, before ultimately being registered in the name of the appellant on 29th May 1998, under the repealed ***Registered Land Act, cap 300***. It is common ground that at all material times before 8th May 1995 the suit property was Government property on which were erected public buildings serving as stores for primary school books and milk, and municipality offices for the departments responsible forvalue added tax,manpower and employment.

On 8th May 1995 three companies known as ***Biimarsha Ltd, Kuinet Hardware Ltd*** and ***Sotken Ltd*** applied in writing to the Commissioner of Lands to be allotted the suit property, which they represented to be *"a vacant Government plot"*. A month later on 7th June 1995, the Commissioner acceded to the request upon certain conditions, including payment of ***Kshs 319,330.00,*** which the companies duly paid on 9th August 1995.

On 6th September 1995 the Commissioner of Lands advised the ***District Commissioner (DC),*** Eldoret, that the suit property had been allocated to a private developer and to accordingly initiate steps for boarding the premises thereon, which we understand to mean a process of assessment of the premises for purposes of condemnation, demolition and removal from the register of Government buildings, if found to be unusable and beyond economic repair. It is not entirely clear to us why a boarding exercise was necessary if indeed the suit premises were vacant at the time of its allocation as the companies and the commissioner purported to be the case. Be that as it may, moving post haste and with alacrity, the DC convened the very next day, 7th September 1995, a Board of Survey for Government offices and houses made up of 4 persons including himself, which proceeded to recommend boarding, not only of the premises on the suit property, but also the District Headquarters, the law courts, and the land office. All those properties were immediately thereafter allocated to private persons and have been the subject of various suits seeking to restore them back to the public. As regards the suit property, the buildings thereon were valued at ***Kshs 696,000.00.***

On 13th November 1995, the leasehold interest in the suit property was transferred to ***Biimarsha Property Development Consultants Ltd***, ***Sonken Ltd***,***Japheth Kipkemboi Magut, Amge Kipkorir Kiptui***, and ***Wilfred Kiptum Kitur***, all trading as ***Kuinet Hardware***, after they paid the assessed value of the premises erected thereon and the stamp duty of ***Kshs. 27,850.00.*** As is patently clear, the suit property was not transferred to exactly the same parties that had applied for its allotment.

Be that as it may, on 16th November 1995, barely three days after transfer of the suit property to them, the allotees sold and transferred the same to ***Ekima Junior Academy*** for a consideration of ***Kshs 300,000.00***, clearly far much less than the sums that they had expended or paid for it. Lastly, on 21st August 1998, Ekima Junior Academy sold and transferred the suit premises to the appellant. Although the appellant claims that the consideration was ***Kshs 9,000,000.00,*** the consideration indicated in an agreement for sale between the parties is ***Kshs 20,000,000.00*** and that in the Transfer of Lease a paltry ***Kshs 200,000.00.***

At this point it is necessary to advertto the faces behind the companies that were involved in the transactions pertaining to the suit property. Among the directors of Kuinet Hardware, one of the allottees of the suit property were ***Wilfred Kiptum Kitur Kimalat***, then the Permanent Secretary, Office of the President in charge of Provincial Administration, and ***Japheth Kipkemboi Magut***, a brother of the then mayor of Eldoret Municipality, ***Josiah Magut***. Japheth Kipkemboi Magut, was also a director of Biimarsha Property Development Consultants Ltd, another of the initial allottees of the suit premises. On the other hand the directors of Ekima Junior Academy Ltd, which bought the suit property from the initial allottees, were the same Wilfred Kiptum Kitur Kimalat, Japheth Kipkemboi Magut, and ***Elisha Chebii Chesiyna***, then a deputy commissioner of lands in the Ministry of Lands. Margaret Tutoek, the managing director of the appellant is the wife of Japheth Kipkemboi Magut.

The appellant subsequently took possession of the suit property and it claims, developed thereon shops at a cost of Kshs 3,000,000.00, which it rented out to members of the public. However, in March 2003, the Government, contending that the purported allotment, and eventual sale and transfer of the suit property to the appellant was fraudulent, illegal, null and void, repossessed the suit property and put the Uasin

Gishu District Hospital in possession, where it operates to date.

On 21st January 2005 the appellant took out originating summons primarily under ***section 75*** of the former Constitution and the the ***Constitution of Kenya (Protection of Fundamental Rights and Freedoms of the Individual) Practice and Procedure Rules***against the Attorney General and the Permanent Secretary for Health, seeking declarations that it was the lawfully registered proprietor of the suit property; that its eviction therefrom was unconstitutional, null and void, and an order restoring it into possession in lieu of Uasin Gishu District Hospital.

The ***Kenya Anti-Corruption Commission (KACC),*** the predecessor of the present Ethics and Anti-Corruption Commission (EACC), the 3rd respondent applied and was joined to the proceedings as an interested party pursuant to an order dated 30th September 2008. The two respondents and the KACC opposed the summons contending that the suit property was alienated Government land that was not available for allocation; that its allotment to private persons was illegal, null and void; that the boarding of buildings on the suit property was unprocedural and illegal; that the suit property was grossly undervalued to the prejudice of the public; that the transactions leading to the registration of the appellant as the proprietor were tainted by undue influence and fraud; that the transactions were a sham calculated to give the appellant the semblance of an innocent purchaser for value; that for all intents and purposes the suit property remained under the control of the initial allotees and in particular Wilfred Kiptum Kitur Kimalat, and Japheth Kipkemboi Magut; and that in the circumstances the appellant did not have a lawful title capable of protection by the law.

As already adverted, the High Court held that the evidence on record *prima facie* disclosed fraud and illegality in the acquisition of the suit property. After noting that the KACC was actively investigating the transactions and that further proceedings, including criminal proceedings, were contemplated against the appellant, the court declined to issue the declarations sought by the appellant, thus precipitating this appeal.

The appellant has put forth four grounds of appeal, in which it impugns the judgment of the High Court for failing to find that the respondents violated its right to property under section 75 (1) of the former Constitution; for not holding that its eviction from the suit property was illegal; for failing to grant relief merely because the appellant was under investigation by the KACC; and for failing to hold that the appellantwas a *bona fide* purchaser for value.

On the first ground of appeal, the appellant submitted that by dint of ***section 28*** of the repealed Registered Land Act and the judgment of this Court in ***Joseph N. K. Arap Ng'ok v. Moijo ole Keiwua & 4 Others [1997] eKLR***, its title as the registered proprietor of the suit property was indefeasible and therefore it could not be denied use and enjoyment of the suit property. In the absence of a court order nullifying or cancelling its title to the suit property, the appellant urged us to find that it enjoyed protection under ***section 75 (1)*** of the former Constitution.

On the second ground of appeal, the appellant submitted that it was in possession of the suit property as the registered proprietor when it was illegally evicted therefrom on 28th March 2003. It contended that the eviction was neither pursuant to a court order nor justified under ***section 75(6)*** of the former constitution, which created exceptions to the right to property guaranteed by section 75(1). It was the appellant's further submission that it was denied the right to natural justice and in particular the right to be heard before the eviction. On the authority of ***General Medical Council v. Spackman [1943] 2 All ER 337, Attorney General v. Ryan [1980] AC 718*** and ***Mirugi Kariuki v. Attorney General, CA No. 70 of 1991,*** it was urged that a decision affecting the legal rights of a person that is arrived at in violation of natural justice is null and void. The appellant also submitted that the learned judge erred by failing to find that its eviction, which was not sanctioned by a court order, was illegal and that the respondents should not have benefitted from their illegal actions. The judgment of the High Court in ***Kuria Greens Ltd v. Registrar of Titles & Another [2010] eKLR*** was cited in support of the submission.

Regarding the third ground of appeal, the appellant submitted that its title to the suit property could only be defeated by an order of rectification issued by the court under ***section 143*** of the repealed Act and not

by the mere fact that the KACC had launched investigations on how it had acquired the property. We were urged to find that the High Court, which is vested with jurisdiction to protect the right to property, abdicated its duty when it suggested that the right to property is suspended pending investigations or further proceedings. The learned judge was also faulted for having regard to ***section 40(6)*** of the current Constitution, which does not protect illegally acquired property, whilst the provision had no application in the present case, becauseit fell for determination under the former Constitution.

Lastly the appellant submitted that the leaned judge should have held that it was a *bona fide* purchaser for value within the meaning of section 143 of the repealed Act and that its title to the suit property could not be defeated on account of irregularities, if any, committed by the previous owners of the suit property.

The 1st and 2ndrespondents opposed the appeal contending that at the time the suit property was allegedly allocated, it was not available for allocation because it was alienated Government land with premises for public use. They also submitted that under ***section 48*** of the repealed Act, the initial allotees could not transfer the suit property to alleged subsequent purchasers without the consent of the Commissioner for Lands. It was the further submission of these respondents that the appellant did not obtain a good and indefeasible title to the suit property due to the irregular and illegal nature of allotment and subsequent transfers and therefore section 75(1) of the former Constitution could not come to its aid. They relied on the decisions of this Court in ***Funzi Island Development Ltd & 2 Others v. County Council of Kwale [2014] eKLR*** and ***Munyu Maina v. Hiram Gathiha Maina [2013] eKLR*** to make the point that an illegal transaction cannot confer indefeasible title and that public interest should be taken into account.

On its part, the 3rd respondent also opposed the appeal submitting that the appellant obtained registration of the suit property in its name fraudulently and illegally. Relying on section 4 of the repealed Registered Land Act, it further contended that it was not the policy of that statute to protect title obtained contrary to the provisions of the law. On the registration of the appellant as the proprietor of the suit property, the 3rd respondent submitted that the same was illegal becausewhen the suit property was purportedly allocated to private developers, it was not available for allocation; it was alienated Government land in actual use for public services and that the representation that it was vacant when it was purportedly allocated to private developers was fraudulent misrepresentation.

Secondly the 3rd respondent submitted that there was no valid alienation of the suit property because it was purportedly alienated by the Commissioner of Lands rather than by the President as required by section 3 of the Government Lands Act. In support of the submission that the commissioner had no power to alienate Government land, the 3rd respondentrelied on the judgment of this Court in ***Henry Muthee Kathurima v.Commissioner of Lands & Another [2015] eKLR***. The judgment in***Funzi Island Development Ltd & 2 Others v. County Council of Kwale (supra)*** was also cited in support of the view that title to land obtained in contravention of the law is invalid.

As regards the appellant’s contention that it had developed the suit property at a cost of Kshs 3,000,000.00, the 3rd respondent submitted that no evidence of such investment was adduced and that the suit property could not be lawfully re-developed without plans and drawings duly approved under the Physical Planning Act. It relied on the judgment of this Court in ***Samuel Otieno Otieno v. Municipal Council of Malindi & Another [2015] eKLR*** to support that position.

Lastly on whether the appellant was a *bona fide* purchaser for value, the 3rd respondent submitted that the evidence on record shows that all the parties who dealt with the suit property were closely related or connected and were aware of its irregular acquisition and that the purported transfer of the suit property from one owner to another was calculated to enable the appellant claim that it was a *bona fide* purchaser for value, without notice. It was also submitted, on the authority of the judgment of this Court in ***Kipsirgoi Investment Ltd v. Kenya Anti-Corruption Commission, CA No. 288 of 2010***, that a *bona fide* purchaser for value without notice is protected subject to the qualification that the title in issue was not created in breach of statute.

We have duly considered the record of appeal, the judgment of the High Court, the memorandum of

appeal, the submissions by learned counsel and the authorities that were cited. In our view, at the heart of this appeal lies only one fundamental question, namely whether the appellant proved on a balance of probability that it had proprietary rights in the suit property that were worthy of protection under section 75(1) of the former Constitution, thus entitling it to the declaration it had sought, as well as an order for possession.

The appellant relies on the fact of its registration as proprietor of the suit property and the assertion that it is a *bona fide* purchaser for value without notice, to justify the orders it had sought, which it contends were unjustifiably denied by the High Court. On the other hand, the respondent's rejoinder is that where registration as proprietor of a property has been obtained illegally or fraudulently, the law does not protect such title and that in this case the appellant was an active participant in fraud rather than an innocent purchaser for value without notice.

It cannot be gainsaid that under section 27 of the repealed Registered Land Act, registration of a person as proprietor of a parcel of land or leasehold interest vested in that person the absolute ownership of the land or leasehold interest with all the rights and privileges belonging or appurtenant thereto. Subject to specified encumbrances and overriding interests, Section 28 protected the rights of the proprietor in absolute terms as follows:

> ***28. The rights of a proprietor, whether acquired on first registration or whether acquired subsequently for valuable consideration or by an order of court, shall not be liable to be defeated except as provided in this Act, and shall be held by the proprietor, together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever..."***

The other relevant provision, which underlines the protection afforded to a proprietor under the repealed Act, is section 143. That provision denied the court a blank cheque in rectification of the register and provided as follows:

> ***"143. (1) Subject to subsection (2), the court may order rectification of the register by directing that any registration be cancelled or amendedwhere it is satisfied that any registration (other than a first registration)has been obtained, made or omitted by fraud or mistake.***
>
> > ***(2) The register shall not be rectified so as 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 his act, neglect or default."***

The above provisions have consistently been held to guarantee sanctity of title, which cannot be defeated except on the specific and serious grounds set out therein. However, we must hasten to add that title to property that is obtained fraudulently or illegally in violation of the provisions of the statute is and was not sacrosanct and did not enjoy protection of the law under the repealed Act. Recently in, ***Denis Noel Mukhulo & Another v Elizabeth Murungari Njoroge & Another*, CA No. 298 of 2013**, this Court explained the situation as follows:

> ***"While we agree with the appellants that title registered under the Registered Land Act was sacrosanct, we are not able to agree that the Act protected title registered under it in all and sundry cases, irrespective of how the title was acquired. By section 27 of the Act, the registration of a person as a proprietor of land vested in him the absolute ownership of the land together with all rights and privileges belonging or appurtenant thereto, while section 28 of the Act insulated the rights of a proprietor from challenge except in the manner set out in the Act, which really does not afford the blanket protection that the appellants claim it did. Section 143 of the Act, which granted the court power to order rectification of the register provided as follows...The effect of the above provision is that the court had power to order rectification, save in the case of a first registration, where the registration was obtained by fraud or mistake to which the registered person was party."***

Decisions abound where courts in this land have consistently declined to recognise and protect title to land, which has been obtained illegally or fraudulently, merely because a person is entered in the register as proprietor. See for example ***Niaz Mohamed Jan Mohamed v. Commissioner for Lands & 4 Others* [1996] eKLR; *Funzi Island Development Ltd & 2 Others v. County Council of Kwale* (supra); *Republic v. Minister for Transport & Communications & 5 Others ex parte Waa Ship Garbage Collectors & 15 Others*KLR (E&L) 1, 563**; ***John Peter Mureithi & 2 Others v. Attorney General & 4 Others* [2006] eKLR; *Kenya National Highway Authority v. Shalien Masood Mughal & 5 Others* (2017) eKLR; *Arthi Highway Developers Limited v. West End Butchery Limited & 6 Others* [2015] eKLR: Munyu Maina v Hiram Gathiha Maina [2013] eKLR** and ***Milan Kumarn Shah & Others v. City Council of Nairobi & Others*, HCCC No. 1024 of 2005.**The effect of all those decisions is that sanctity of title was never intended or understood to be a vehicle for fraud and illegalities or an avenue for unjust enrichment at public expense.

Turning to the facts of this appeal, it is not in dispute that at the time the initial allotees applied to be allocated the suit property, it was government land on which were erected buildings used for public purposes. The allotees deliberately represented that the suit property was vacant and the commissioner of lands, who should have known better, went along with the deliberate misrepresentation. Even though pretending that the suit property was vacant, the commissioner on 6th September requested the district commissioner to constitute a board of surveyors to literal facilitate the condemnation of the public premises on the suit property to facilitate its allocation. That exercise was undertaken with alacrity the very next day, and resulted, after a meeting lasting barely two hours, in the condemnation, not only of the buildings on the suit property, but also the District Headquarters and the law courts, among others. The appellant claims that we should applaud rather than condemn that level of efficiency, but with respect, what we see is not efficient delivery of public service, but rather, deliberate and shameless fast-tracking of a flawed process to facilitate quick theft of public property. Such hurried and manipulated exercises must never be confused with efficient service to the public. As is evidently clear, the persons in whose favour the exercise was speeded up were not your ordinary Kenya citizens, but well-heeled and connected individuals, bureaucratically and politically.

The evidence on record also shows that the prescribed procedure for boarding of government premises as prescribed in the Government Financial Regulations and Procedures and the ***Ministry of Works and Housing Circular No 2/58 of 1958***was ignored with impunity, leading to the complete sidestepping the Permanent Secretary and the Treasury who are key players in the exercise. In addition the buildingson the suit property were undervalued and "sold for a song"at Kshs 696,000, which the same allottees, who incidentally had claimed that the suit property was vacant, gladly paid. According to the then Permanent Secretary in the Ministry of Lands and Housing, the value of the suit property and the buildingsthereon at that time was ***Kshs 17,700,000.00***. Barely three days after registration of the suit property in the name of the allotees, they hurriedly purported to sell and transfer it to Ekima Junior Academy.

A few things stand out about thetransactions involving the suit property. First is the speed with which the suit property changed hands in a period of only three days, even before the ink that entered the names of the allottees in the register had dried. Second is the consideration that was purportedly paid. We appreciate that in the law of contract, consideration need not be adequate, but it surely strikes us as rather odd that a person can seek allocation of a property, pay a total of ***Kshs. 1,043,180.00*** for the land, the buildings thereon and stamp duty, and then immediately after registration as proprietor, sell it to a total stranger for a paltry Kshs 300,000.00. In our view no rational person pursues such a business model and the only explanation for the transaction was that it was a shell transaction to conceal the illegal nature of the acquisition of the suit property and to introduce a smokescreen of a third party innocent purchaser.

The third aspect of the transaction, which gives credence to the assertion by the respondents that it was a bare stratagem, is the fact that some of the people behind the firms which were allotted the suit property were the same people behind Ekima Junior Academy and the appellant, to which the suit property was ultimately transferred. Kimalat and Magut were in the firms that misrepresented that the suit property was vacantso as to get it allocated to themselves. They were both directors of Ekima Junior Academy to which the suit property was allegedly sold and transferred. On the other hand, Margaret Tutoek, the wife of Magut, was a director of the appellant, to which Ekima Junior Academy purportedly sold and transferred

the suit property.

The last strand of evidence, which may on first sight seem innocuous, is however very telling. It is the postal address used by some of the key players in this saga. Biimarsha Property Development Consultants Ltd, one of the allotees of the suit property, Ekima Junior Academy, the first purported purchaser of the property and Margaret Tutoek, a director of the appellant, the purported second purchaser of the suit property, all share the same postal address, ***P.O. Box 815 Eldoret***. Taking into account all the other odd aspects of the transaction that we have adverted to, we do not believe this was a mere coincidence. It is evidence that the suit property was being transferred between the same players to create a false halo of*bona fide* purchasers for value without notice.

The evidence on record shows that even after the suit property was purportedly transferred to Ekima Junior Academy, the latter never took possession until it purported to sell and transfer the same to the appellant. As regards the transfer of the suit property to the appellant, the connection between the directors and the prior allotees and transferees of the suitproperty is too obvious to varnish. There is also the additional inconsistent evidence on record where, on the one hand the appellant claims to have purchased the suit property from Ekima Junior Academy for Kshs 9,000,000.00, whilst a different agreement for sale between the parties shows the purchase price to be Kshs 20,000,000.00. However, the transfer which was used to transfer the property from Ekima Junior Academy to the appellant shows a consideration of only Kshs 200,000.00, possibly to avoid payment of the due stamp duty. In the absence of any rational explanation for these fundamental discrepancies, the conclusion is inescapable that the transaction was a sham, a fraudulent stratagem to reinforce the myth that the appellant was an innocent purchaser for value without notice. From the evidence, it was not.

We have noted that the Ekima Junior Academy never took possession of the suit property. It therefore means that when the appellant purported to purchase the same, the suit property was in the same condition it was when it was initially allocated, namely in use for public purposes. We ask ourselves, which innocent purchaser, without notice, would accept to purchase a property that is being used for public purposes, just next to the provincial headquarters and the law courts, without any form of inquiry? As this Court stated in ***Arthi Highway Developers Limited v. West End Butchery Limited & 6 Others (supra),*** only a foolhardy, and we may add, a careless or fraudulent investor would purchase land such as the suit property "*with the alacrity of a potato dealer in Wakulima market.*" And further in ***Flemish Investments Ltd v. Town Council of Mariakani, CA No. 30 of 2015***, in an appeal where the appellant, who had fraudulently obtained registration of public property in his name, but claimed to be an innocent purchaser for value without notice, this Court stated:

> ***"A bona fide purchaser exercising due diligence would be expected to inspect the property he is buying, to ascertain its physicallocation, persons, if any, in occupation, developments, buildings and fixtures thereon, among others. If indeed the appellant honestly believed that Plot No. 34 and the cattle dip on it were part of the suit property, he would have rehabilitated the cattle dip as his property, or simply demolished it, not to pester the respondent for its relocation. For a party who was buying a commercial property rather than a ranch, the presence of a cattle dip on the property should have rang alarm bells***."

The appellant has made heavy weather of the fact that the respondents repossessed the illegally transferred suit property in an equally illegal manner, without a court order. This Court cannot give a seal of approval to self-help, high-handed tactics, or violation of the law in order to right what is perceived to be a wrong. However, in this case we are confronted by two wrongdoers, one having fraudulently acquired land set aside for public use and the other having restored the land back to public use without following the prescribed procedure. The suit property is now used as a public health facility in the form of Uasin Gishu District Hospital. Both the appellant and the respondents would be entitled to invoke public interest in aid of their respective cases. To the respondents, it is in public interest to ensure that property set apart for public use that is fraudulently transferred to a private individual is restored back to public use. To the appellant, it is in public interest to ensure that the law is strictly followed to address any grievance the respondents may have; otherwise the result will be the law of the jungle and utter chaos. The learned judge below preferred to err on the side of public interest that would resort in restoration of

the suit property to public use.In the peculiar circumstances of this appeal, we are not persuaded that there is any basis for us to interfere with his decision, even though we do not approve of the self-help tactics adopted by the respondents.

We also do not think that the learned judge can be criticised for referring in his judgment to section 40(6) of the current Constitution which expressly provides that title to property which is obtained illegally does not enjoy constitutional protection. The learned judge was very clear in the judgment that it was the former Constitution, which applied in this case, and merely referred to Article 40(6) of the current Constitution to make the point, which he was entitled to do, that henceforth by dint of express constitutional edict, those who illegally acquire property cannot take refuge under the right to property that the Constitution guarantees.

Having carefully re-evaluated the evidence on record, we cannot fault the learned judge for refusing to grant the orders that the appellant had sought. The appellant’s registration was not a first registration within the meaning of section 143 of the repealed Act and in addition the evidence leaves no doubt that the appellant had actual knowledge of the fraud that ultimately led to registration of the suit property in its name. This appeal has no merit and is dismissed with costs to the respondents. It is so ordered.

Dated and delivered at Nairobi this 26th day of January, 2018

ASIKE-MAKHANDIA

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JUDGE OF APPEAL

S. GATEMBU KAIRU, FCIArb

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JUDGE OF APPEAL

K. M’INOTI

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JUDGE OF APPEAL

I certify that this is a

true copy of the original

DEPUTY REGISTRAR