



**Mayfair Holdings Limited v County Commissioner Kisumu & 3 others; Ethics & Anti-Corruption Commission & another (Interested Parties) (Constitutional Petition 2 of 2019) [2024] KEELC 6332 (KLR) (26 September 2024) (Judgment)**

Neutral citation: [2024] KEELC 6332 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KISUMU  
CONSTITUTIONAL PETITION 2 OF 2019  
SO OKONG'O, J  
SEPTEMBER 26, 2024  
IN THE MAIN PETITION**

**BETWEEN**

**MAYFAIR HOLDINGS LIMITED ..... PETITIONER**

**AND**

**THE COUNTY COMMISSIONER KISUMU ..... 1<sup>ST</sup> RESPONDENT**

**THE REGIONAL CO-ORDINATOR NYANZA ..... 2<sup>ND</sup> RESPONDENT**

**THE ATTORNEY GENERAL ..... 3<sup>RD</sup> RESPONDENT**

**KENYA RAILWAYS CORPORATION ..... 4<sup>TH</sup> RESPONDENT**

**AND**

**ETHICS & ANTI-CORRUPTION COMMISSION ..... INTERESTED PARTY**

**PROF BETWELL OGOT ..... INTERESTED PARTY**

**JUDGMENT**

1. The Petitioner brought this petition against the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents in the main petition on March 25, 2019. The petition was supported by a verifying affidavit and a further affidavit sworn by Amin Mohamed Gilani on 22<sup>nd</sup> March 2019 and 19<sup>th</sup> October 2021 respectively. In the petition, the Petitioner contended that it was the registered proprietor of all that parcel of land known as Kisumu Municipality/Bock 11/100 (hereinafter referred to as “Plot No. 100”). The Petitioner contended that in breach of its constitutional right to property, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents in the main petition invaded Plot No. 100 on or about 18<sup>th</sup> February 2019 and started using the same for parking vehicles without its consent. The Petitioner sought judgment against the Respondents in the main petition for;



- a declaration that the Petitioner was the rightful owner of Plot No. 100 and that the Respondents in the main petition had violated the Petitioner's right to property.
2. The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents in the main petition opposed the petition through a replying affidavit sworn by Dr. Karanja Kibicho on 24<sup>th</sup> June 2019. They contended that Plot No. 100 was public land reserved for the construction of Nyanza Regional/Provincial Headquarters and that the same was unlawfully alienated to the Petitioner in the main petition. The 4<sup>th</sup> Respondent and the 1<sup>st</sup> Interested Party in the main petition were added to the petition on 9<sup>th</sup> March 2021 while the 2<sup>nd</sup> Interested Party was added to the main petition on 24<sup>th</sup> January 2022.
  3. The 4<sup>th</sup> Respondent in the main petition filed a response to the petition, and a cross-petition against; the Petitioner, the 3<sup>rd</sup> Respondent in the main petition, and two new Respondents and Interested Parties on 28<sup>th</sup> June 2021. The 4<sup>th</sup> Respondent's response to the petition, and its cross-petition were supported by the affidavit of Justine Omoke sworn on 21<sup>st</sup> June 2021 and filed on 28<sup>th</sup> June 2021. The 4<sup>th</sup> Respondent/ cross-petitioner contended that Plot No. 100 was registered in its name as the leasehold proprietor thereof and that it had subleased the same to the 2<sup>nd</sup> Interested Party in the main petition. The 4<sup>th</sup> Respondent averred that Plot Nos. 99 and 100 were subdivisions of land parcel No. Kisumu Municipality/ Block 11/3 which was owned by the 4<sup>th</sup> Respondent and that the 4<sup>th</sup> Respondent had subleased Plot No. 99 to one, George Okungu. The 4<sup>th</sup> Respondent averred that the Petitioner in the main petition purportedly acquired titles to Plot Nos. 99 and 100 while there were other lawful titles in respect of the properties in existence. The 4<sup>th</sup> Respondent contended that the purported titles issued to the Petitioner in the main petition regarding Plot Nos. 99 and 100 were fraudulent and illegal. In its cross-petition, the 4<sup>th</sup> Respondent/cross-petitioner reiterated its response to the petition. The 4<sup>th</sup> Respondent maintained that it was the lawful and legitimate proprietor of Plot Nos. 99 and 100 and that the purported ownership of the same by the Petitioner in the main petition was fraudulent and illegal. The 4<sup>th</sup> Respondent sought among other prayers; a declaration that the conduct of the Respondents in the cross-petition contravened the 4<sup>th</sup> Respondent's constitutional rights, a declaration that the 4<sup>th</sup> Respondent was the legitimate proprietor of Plot Nos. 99 and 100, an order of mandamus compelling the 3<sup>rd</sup> Respondent in the cross-petition to nullify the letter of allotment dated 16<sup>th</sup> June 1999 issued to the Interested Parties in the cross-petition regarding Plot No. 100, an order of mandamus compelling the 2<sup>nd</sup> Respondent in the cross-petition to cancel the certificates of lease issued to the Petitioner in the main petition regarding Plot Nos. 99 and 100, an order of mandamus compelling the 2<sup>nd</sup> Respondent in the cross-petition to rectify the registers by cancelling the registration of the Petitioner in the main petition as the proprietor of Plot Nos. 99 and 100 and replacing the same with the 4<sup>th</sup> Respondent as the leasehold proprietor of the said properties and the 2<sup>nd</sup> Interested Party in the main petition and George Okungu as the sub-lessees thereof respectively, an order of eviction of the Petitioner in the main petition from Plot Nos. 99 and 100, and damages for violation of the 4<sup>th</sup> Respondent's constitutional rights and fundamental freedoms.
  4. The Petitioner/1<sup>st</sup> Respondent in the cross-petition filed a reply to the cross-petition on 19<sup>th</sup> October 2021 in which it denied the allegations contained therein and contended that the 4<sup>th</sup> Respondent in the petition/cross-petitioner was not entitled to the orders sought in the cross-petition.
  5. The 1<sup>st</sup> Interested Party in the main petition filed a defence and a counter-claim dated 3<sup>rd</sup> March 2021 against the Petitioner in the main petition. The 1<sup>st</sup> Interested Party in the main petition contended that Plot Nos. 99 and 100 which were being claimed by the Petitioner in the main petition belonged to the 4<sup>th</sup> Respondent in the main petition/cross-petitioner. The 1<sup>st</sup> Interested Party in the main petition contended that Kisumu Municipality/Block 11/187 (hereinafter referred to as "Plot No. 187") also



claimed by the Petitioner did not exist in that it was created from a road reserve. The 1<sup>st</sup> Interested Party averred that the purported titles held by the Petitioner in the main petition regarding Plot Nos. 99, 100 and 187 (hereinafter together referred to as “the suit properties”) were fraudulent and illegal. The 1<sup>st</sup> Interested Party in the main petition averred that no consent was obtained from the 4<sup>th</sup> Respondent in the main petition before Plot Nos. 99 and 100 were allocated to the Petitioner in the main petition. The 1<sup>st</sup> Interested Party contended further that the Petitioner in the main petition never applied for the suit properties and that there were parallel titles in respect of the said properties. In its counter-claim against the Petitioner in the main petition, the 1<sup>st</sup> Interested Party in the main petition sought among others, a declaration that the registration of the Petitioner as the proprietor of the leasehold interest in the suit properties was null and void and that the same should be cancelled, a declaration that Kisumu Municipality/Block 11/187 did not exist as it was meant to be a road reserve measuring 18.2m wide, and an order for the rectification of the registers of the suit properties by the cancellation of the leasehold titles issued in respect thereof in favour of the Petitioner in the main petition and restoration of the parcels of land to the 4<sup>th</sup> Respondent in the main petition/cross-petitioner.

6. George Okungu, and Professor Bethwell Ogot the 2<sup>nd</sup> Interested Party in the main petition filed affidavits both sworn on 24<sup>th</sup> March 2021 through the 1<sup>st</sup> Interested Party in the main petition urging the court to dismiss the petition. While adding the 2<sup>nd</sup> Interested Party to the petition, the court ordered that the pleadings that the 2<sup>nd</sup> Interested Party had filed in Kisumu ELC No. 767 of 2015, Prof. Bethwell Ogot v. Moses Onyango, George Nyakundi, Mayfair Holdings & 2 others (formerly Kisumu HCCC No. 18 of 2005) (ELC No. 767 of 2015) were to be deemed as the 2<sup>nd</sup> Interested Party to the main petition’s response to the main petition. In ELC No. 767 of 2015, Bethwell Ogot, the 2<sup>nd</sup> Interested Party in the main petition/Plaintiff in the suit averred that he was the leasehold proprietor of Plot No. 100 the same having been subleased to him by the 4<sup>th</sup> Respondent in the main petition on 18<sup>th</sup> January 1999 for a term 60 years with effect from 1<sup>st</sup> January 1989. The 2<sup>nd</sup> Interested Party in the main petition averred that sometime in 2005, he noted some activities on Plot No. 100 and upon carrying out a search on the property at the land registry, he found the register that had the 4<sup>th</sup> Respondent in the main petition as the lessee of Plot No. 100 and he as the sub lessee removed and replaced with another register with the names of Moses Onyango and George Nyakundi, the Interested Parties in the cross-petition as the lessees of Plot No. 100 from the Government of Kenya for a term of 99 years from 1<sup>st</sup> July 1999. The 2<sup>nd</sup> Interested Party in the main petition averred further that the said new register also revealed that Moses Onyango and George Nyakundi had purported to sell Plot No. 100 to the Petitioner in the main petition at a consideration of Kshs. 2,500,000/-. The 2<sup>nd</sup> Interested Party in the main petition averred that the registration of Plot No. 100 in the names of Moses Onyango and George Nyakundi as the leasehold proprietors thereof and the purported transfer of the property to the Petitioner in the main petition was fraudulent and could not pass a valid interest in Plot No. 100 to the Petitioner. The 2<sup>nd</sup> Interested Party in the main petition prayed for among others; a declaration that he was the proprietor of Plot No. 100 as a lessee thereof from the 4<sup>th</sup> Respondent in the main petition and was entitled to immediate possession thereof, and that the certificate of lease that was issued to the Petitioner in the main petition regarding Plot No. 100 was obtained fraudulently and as such was null and void.
7. From the record of ELC No. 767 of 2015, I have only seen the defence by the Commissioner of Lands and the National Land Commission to the 2<sup>nd</sup> Interested Party in the main petition’s claim in that suit. In their defence filed on 22<sup>nd</sup> August 2013 to the further amended plaint by the 2<sup>nd</sup> Interested Party in the main petition, the Commissioner of Lands and the National Land Commission denied the 2<sup>nd</sup> Interested Party in the main petition’s claim in its entirety. The Commissioner of Lands and the National Land Commission averred that if there was fraud in the registration of Plot No. 100 in



the names of Moses Onyango and George Nyakundi and subsequently in the name of the Petitioner in the main petition, they were not parties to the same. On 26<sup>th</sup> October 2021, ELC No. 767 of 2015 was consolidated with this petition and this petition became the lead file.

## The Evidence

8. The Petitioner in the main petition called one witness, Amin Mohamed Sadrudin Gilani (PW1). PW1 told the court that he was the Managing Director of the Petitioner in the main petition. He stated that the Petitioner filed the petition because it was holding titles for the suit properties which had been challenged by the Respondents in the main petition. He stated that he swore an affidavit which was filed in court on 19<sup>th</sup> October 2021 which explained how the Petitioner acquired the suit properties. He also filed a further list of documents on 21<sup>st</sup> April 2021. He adopted the said affidavit together with the attachments as his evidence in chief and produced the documents attached to his further list of documents filed on 21<sup>st</sup> April 2021 as a bundle as P.EXH. 1.
9. On cross examination by the advocate for the 1<sup>st</sup> Interested Party in the main petition, PW1 stated that the Petitioner in the main petition purchased the suit properties and that before the Petitioner purchased the same, PW1 did not visit the same personally. PW1 stated that the suit properties were purchased by his father one, Sadrudin Gilani who was also director of the Petitioner. He stated that he was not involved in the purchase of the suit properties. He stated that he subsequently visited the suit properties on a number of occasions. He stated that the properties were vacant and that the Petitioner fenced the same. He stated that the suit properties were adjacent to Prosperity House and that the Central Bank of Kenya was in the neighbourhood. He stated that the Petitioner followed due process when acquiring the suit properties.
10. PW1 stated that he had not seen traces of tarmac on the suit properties and that he was not aware that there was a Part Development Plan (PDP) providing for a road on what was now Plot No. 187. He stated that he was aware that the Governor's Office had intruded on the suit properties broke the gate and started using the same as parking. He stated that when that happened, he instructed his lawyer to write a demand letter to them.
11. PW1 stated that the Petitioner purchased Plot No. 100 from Maurice Oduor Omondi and George Nyakundi, and the Petitioner had a lease over the property from the Government of Kenya and a certificate of lease dated 13<sup>th</sup> January 2003. He stated that the Petitioner purchased Plot No. 99 from George Joshua Okungu at a consideration of Kshs. 3,500,000/-. He stated that he had since become aware that George Okungu held a sublease from Kenya Railways, the 4<sup>th</sup> Respondent in the main petition in respect of Plot No. 99 and that Prof. Bethwell Ogot, the 2<sup>nd</sup> Interested Party in the main petition also had a sublease from Kenya Railways in respect of Plot No. 100. PW1 stated that the Petitioner bought Plot No. 187 from Dr. Wilfred Matung'a Nyakundi.
12. On cross-examination by the advocate for the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents in the main petition and the 2<sup>nd</sup> and 4<sup>th</sup> Respondents in the cross-petition, PW1 stated that he was not aware that there was a tarmac road on Plot No. 187. On cross-examination by the advocate for the 4<sup>th</sup> Respondent in the main petition/cross-petitioner, PW1 stated that the agreement between the Petitioner, and Moses Onyango and George Nyakundi dated 19<sup>th</sup> November 2003 was signed on behalf of the vendors by Maurice Oduor Omondi as an attorney. He stated that he had not seen the power of attorney. He stated that the Petitioner was not aware that the suit properties belonged to the 4<sup>th</sup> Respondent in the main petition. He stated that he signed the agreement for sale in respect of Plot No. 99. He stated that his father obtained the documents of title from the vendor, George Okungu. He stated that in the certificate of lease in favour of George Okungu, the 4<sup>th</sup> Respondent in the main petition was indicated as the lessor.



- He stated that did not have a consent from the 4<sup>th</sup> Respondent and the Commissioner of Lands for the sale of the property to the Petitioner or a surrender of property. He stated that in the Petitioner's petition, it had only made a claim in respect Plot No. 100. He stated that the other two parcels of land were not in contention until the 1<sup>st</sup> Interested Party in the main petition came to the picture. He stated that the 4<sup>th</sup> Respondent had not come forward to claim the same.
13. On cross-examination by the advocate for the 2<sup>nd</sup> Interested Party in the main petition, PW1 stated that he was now aware that there was a lease in favour of Prof. Bethwell Ogot in respect of Plot No. 100. He stated the he did look at the register of the property while purchasing the same and if the court determined that the Petitioner was duped into purchasing the property, the Petitioner will abide by the determination.
  14. On re-examination by the Petitioner's advocate, PW1 stated that there was no road passing through the suit properties which were fenced together as a block. He stated that the Petitioner had not developed the suit properties. On examination by the court, PW1 stated that the Petitioner did not have in its records a document of lease in respect of Plot No. 99. He stated that due diligence on the suit properties was done by his father. He stated that in the certificate of lease for Plot No. 99 in favour of George Okungu, the name of the lessor is given as Kenya Railways while in the Petitioner's Certificate of Lease, the name of the lessor is given as Government of Kenya.
  15. The 4<sup>th</sup> Respondent in the main petition/Petitioner in the cross-petition, called one witness, Justine Omoke (DW1). DW1 stated that he was working with the 4<sup>th</sup> Respondent as an Assistant Real Estate Manager stationed in Nairobi and that he had sworn an affidavit filed in court on 28<sup>th</sup> June 2021. He adopted the affidavit as his evidence in chief. He stated that the 4<sup>th</sup> Respondent had also filed a list of documents on 28<sup>th</sup> June 2021. He produced the documents attached to the said list of documents filed on 28<sup>th</sup> June 2021 and further list of documents filed on 17<sup>th</sup> November 2021 as D.EXH.1 and D.EXH. 2 respectively.
  16. On cross examination by the advocate for the 1<sup>st</sup> Interested Party in the main petition, DW1 stated that the original reference number for Plot No. 99 and Plot No.100 was L.R. No. 1148/1310. He stated that the property was leased to the predecessor of the 4<sup>th</sup> Respondent, the East African Railways Corporation by the Government of Kenya through a Grant for a term of 99 years with effect from 1<sup>st</sup> January 1932 under the Registration of Titles Act (RTA). He stated that after the collapse of the East African Railways Corporation, the 4<sup>th</sup> Respondent was established. He stated that in 1975 the land, L.R. No. 1148/1310 was converted from the RTA form of land registration to the Registered Land Act(RLA) and was given a new land reference, Kisumu Municipality Block 11/3. He stated that Kisumu Municipality Block 11/3 was subsequently subdivided into Kisumu Municipality Block 11/99 and Kisumu Municipality Block 11/100 (Plot No.99 and Plot No.100). He stated that Plot No. 99 was leased to George Okungu and Plot No. 100 was leased to Prof. Bethwell Ogot (the 2<sup>nd</sup> Interested Party in the main petition) by the 4<sup>th</sup> Respondent which executed subleases in favour of the two.
  17. DW1 stated that Kisumu Municipality Block 11/187(Plot No. 187) appeared to have come about following the consolidation of Kisumu Municipality Block 11/151, 153 and 154 on 21<sup>st</sup> April 1997. He stated that Parcel No. 187 was subdivided in 1997 to give rise to land Parcel numbers 188 to 196. He stated that Parcel No. 187 ceased to exist upon subdivision and its title must have been surrendered. He stated that Parcel No. 99 and Plot No. 100 belonged to the 4<sup>th</sup> Respondent in the main petition.
  18. On cross examination by the advocate for the Petitioner in the main petition, DW1 stated that George Okungu and Bethwell Ogot took possession of the parcels of land that were subleased to them by the 4<sup>th</sup> Respondent but they did not develop the same. He stated that George Okungu and Bethwell



- Ogot were paying rent to the 4<sup>th</sup> Respondent until the dispute before the court arose. He stated that the sub-lessees were responsible for registering the subleases. He stated that the certificate of lease in favour of George Okungu should have indicated that the lessor was the 4<sup>th</sup> Respondent instead of the Government of Kenya. He stated that the said certificate of lease was obtained without the consent of the 4<sup>th</sup> Respondent.
19. On re-examination by the advocate for the 4<sup>th</sup> Respondent, DW1 stated that the 4<sup>th</sup> Respondent had sought the consent of the Commissioner of Lands to subdivide Kisumu Municipality/Block 11/3(the original parcel) and that the Commissioner of Lands advised that they surrender the title in exchange with the titles for the subdivisions, Plot No.99 and Plot No. 100.
  20. The 1<sup>st</sup> Interested Party in the main petition called several witnesses. Its first witness was WILSON KIBICHII (DW2). DW2 stated that he was working with the Ministry of Lands in the Survey Department as a principal cartographer. He stated that he swore an affidavit on 24<sup>th</sup> March 2021 that was filed in court on the same date. He adopted the affidavit (statement) as his evidence in chief. DW2 referred to the Survey Map for L.R No. 1148/1310-1314 Kisumu Municipality. He stated that L.R No. 1148/1310 which measured 1.250 acres was in the said map. He also referred to the Registry Index Map(RIM) for Block 11, Kisumu Municipality. He stated that he could see Kisumu Municipality/Block 11/99, 100 and 187 (the suit properties). He stated that from entry No. 9 in the amendment section of the RIM, Parcels No. 99 and 100 came from Parcel No. 3. He stated further that according to entry No. 37 of the amendment section of the said RIM, Parcel No. 187 is indicated as having originated from the consolidation of Parcel Nos. 151, 153 and 154. He stated that entry No. 38 showed that Parcel No. 187 was subdivided to give rise to Parcel Nos. 188 to 196. He stated that after the subdivision of Parcel No. 187, it ceased to exist and could no longer be on the RIM. He stated that according to Survey Map F/R No. 318/116 through which Parcel No. 187 was created, Parcel No. 187 is “L” shaped while in the RIM, Parcel No. 187 is rectangular in shape. He stated that Parcel No. 187 in the RIM could not be the same Parcel No. 187 in Survey Map F/R No. 318/116. He stated that the survey that created Parcel No. 187 was meant to close a road between Parcel Nos. 88, 99 and 100. He stated that that was a public utility land. He stated that the right procedure was not followed in closing the road that was to pass through Parcel No. 187.
  21. On cross examination by the advocate for the 4<sup>th</sup> Respondent in the main petition, DW2 confirmed that Parcel No. 99 and Parcel No. 100 were derived from Kisumu Municipality/Block 11/3 following a subdivision that was done on 9<sup>th</sup> August 1988 through Survey Map F/R No. 190/45.
  22. On cross-examination by the advocate for the Petitioner in the main suit, DW2 stated that the purpose of the survey that created Parcel No. 187 was to close a road between Parcel Nos. 88, 99 and 100. He stated that Parcel No. 187 was misused as it could not exist having been subdivided. After the evidence of DW2, the affidavit of Prof. Bethwell Ogot, the 2<sup>nd</sup> Interested Party sworn on 24<sup>th</sup> March 2021 was adopted by consent as his evidence in the petition.
  23. The 1<sup>st</sup> Interested Party’s next witness was CHARLES KIPTANUI BOEN (DW3). DW3 testified as follows: He was working for the 1<sup>st</sup> Interested Party in the main petition in its Kisumu office as an investigator. Before joining the 1<sup>st</sup> Interested Party, he worked with the National Police Service, Criminal Investigation Department. He was asked to carry out an investigation in respect of three parcels of land namely, Kisumu Municipality/Block 11/99, 100, and 187(the suit properties). He prepared an affidavit on 23<sup>rd</sup> March 2021 which was filed in court on 24<sup>th</sup> March 2021. He adopted the affidavit as his evidence in chief. He was the one who collected all the documents relied on by the 1<sup>st</sup> Interested Party (EACC) in the petition. He stated that Plot No. 99 and Plot No. 100 belonged to the 4<sup>th</sup> Respondent in the main petition who had subleased the same to George Okungu and Professor



Bethwell Ogot respectively while Plot No. 187 was a road reserve. The parcel was earmarked for a road that was to serve Prosperity House which was housing the Regional Commissioner and County Government offices. He stated that the road was also to serve Plot Nos. 99 and 100, and the Central Bank Kenya. He stated that Plot Nos. 99 and 100 were not available for alienation as they belonged to the 4<sup>th</sup> Respondent while Plot No. 187 was a road reserve and was allocated illegally. He stated that the double titling of the said parcels of land was an indicator that there was fraud. He stated that from his investigation, it was indicated that Plot No. 187 was created following the amalgamation of Plot Nos. 151, 153 and 154. He stated that in the RIM, Plot No. 151 was still in existence. He stated that there was also an indication that Plot No. 187 was subdivided to give rise to Plot Nos. 188 to 196. He stated that on the RIM, Plot Nos. 188 to 196 were far from the physical location of Plot No. 187 which was a road reserve. He stated that Plot No. 187 was still in existence on the RIM. He stated that if it was indeed subdivided, it could not continue to exist. He stated that Plot Nos. 151, 153 and 154 allegedly amalgamated to give rise to Plot No. 187 were also still in existence. He stated that these were all indications of fraud.

24. On cross-examination by the advocate for the Petitioner in the main petition, DW3 stated that he was an accountant. DW3 stated that he found the suit properties registered in the name of the Petitioner in the main petition who appeared to have purchased the same from third parties. He stated that he found two sets of titles for these properties. He stated that Parcel No. 99 and Parcel No. 100 did not belong to the Government of Kenya but to the 4<sup>th</sup> Respondent in the main petition and as such the Government could not have leased the same to the Petitioner as indicated in the Petitioner's titles. He stated that the purported purchase of the suit properties by the Petitioner was illegal and fraudulent. He stated that the Petitioner should have carried out due diligence. He stated that for Parcel No. 100 there were two titles, one in the name of the 2<sup>nd</sup> Interested Party in the cross-petition, George Nyakundi and the other in the name of Prof. Bethwell Ogot, the 2<sup>nd</sup> Interested Party in the main petition. DW3 stated that it was the 2<sup>nd</sup> Interested Party in the cross-petition who sold Parcel No. 100 to the Petitioner in the main petition. He stated that Parcel No. 99 was leased to George Okungu who sold it to the Petitioner in the main petition. He stated that he did not know George Okungu was the husband of Ms. Okungu who was a former Commissioner of Lands. He stated that Parcel No. 187 was a road reserve and that the surveyors who surveyed and closed the said road were part of a cartel. He stated that the road reserve belonged to the Government of Kenya and that fact was clear from the RIM. He stated that Parcel Nos. 188 to 196 are situated elsewhere.
25. On cross examination by the advocate for the 4<sup>th</sup> Respondent, DW3 stated that Kisumu Municipality Block 11/3 (the original parcel) belonged to the 4<sup>th</sup> Respondent. He reiterated that the title for the property was surrendered to the Commissioner of Lands for subdivision by the 4<sup>th</sup> Respondent and that the subdivision led to the creation of Plot No. 99 and Plot No. 100 which were subleased to George Okungu and the 2<sup>nd</sup> Interested Party in the main petition respectively. He stated that the 4<sup>th</sup> Respondent in the main petition was not involved in the purported purchase of the suit properties by the Petitioner. He stated that when the 4<sup>th</sup> Respondent discovered that Plot No. 99 was said to have been let to George Okungu by the Government of Kenya, the 4<sup>th</sup> Respondent wrote to the Commissioner of Lands to correct the anomaly. He stated that George Okungu and the 2<sup>nd</sup> Interested Party in the main petition were paying rent to the 4<sup>th</sup> Respondent but they were in arrears. He stated that there was nothing on record indicating that the 4<sup>th</sup> Respondent had cancelled the subleases in favour of George Okungu and the 2<sup>nd</sup> Interested Party in the main petition.
26. After the close of evidence, the court directed the parties to make closing submissions in writing and the court thereafter visited the site of the suit properties on 13<sup>th</sup> July 2023 accompanied by the advocates for the parties and a surveyor.



### **The Petitioner's Submissions**

27. The Petitioner in the main petition filed submissions dated 27<sup>th</sup> February 2024. The Petitioner submitted that he acquired the suit properties validly and as such held valid titles in respect thereof. The Petitioner submitted further that the Respondents did not establish that there was any fraud in the acquisition of the suit properties and that the Petitioner was involved in the fraud. The Petitioner submitted that he was a bona fide purchaser of the suit properties for value without notice of any defect in the titles thereof. The Petitioner urged the court to grant the reliefs sought in the main petition and to dismiss the cross-petition and the counter-claim by the 4<sup>th</sup> Respondent and the 1<sup>st</sup> Interested Party respectively with costs. The Petitioner submitted that the 4<sup>th</sup> Respondent's cross-petition was an afterthought. The Petitioner relied on several authorities in support of its submissions.

### **The 4<sup>th</sup> Respondent's Submissions**

28. The 4<sup>th</sup> Respondent/ cross-petitioner filed its submissions on 26<sup>th</sup> October 2023. The 4<sup>th</sup> Respondent/ cross-petitioner submitted that it was the lawful proprietor of Plot No. 99 and Plot No. 100 and that it was not involved in the purported acquisition thereof by the Interested Parties in the cross-petition and the Petitioner in the main petition. The 4<sup>th</sup> Respondent submitted that its interest in the two properties had not been challenged by the Petitioner. The 4<sup>th</sup> Respondent/ cross-petitioner submitted that the Petitioner could only acquire the properties from it or from the Government of Kenya if it had surrendered the same to the Government under the provisions of Sections 13 and 14 of the *Kenya Railways Corporation Act*. The 4<sup>th</sup> Respondent/ cross-petitioner submitted that it did not surrender the two properties or consent to the alienation thereof. The 4<sup>th</sup> Respondent/ cross-petitioner submitted that the two properties were not unalienated Government land that could be allocated by the Commissioner of Lands. The 4<sup>th</sup> Respondent submitted that the Petitioner was under an obligation to go to the root the titles and demonstrate that the initial allocation that led to the issuance of the titles to suit properties was lawful and procedural. In support of this submission, the 4<sup>th</sup> Respondent/ cross-petitioner relied on *Dina Management Limited v. The County Government of Mombasa & Others* (2023) eKLR and *Munyu Maina v. Hiram Gathiha Maina*, Civil Appeal No. 239 of 2009. The 4<sup>th</sup> Respondent/ cross-petitioner submitted that the Respondents in the cross-petition committed acts of fraud. The 4<sup>th</sup> Respondent cited the Uganda case of *Katende v. Haridar & Company Limited* [2008] 2 E.A.173 in support of this submission. The 4<sup>th</sup> Respondent/ cross-petitioner submitted that it had discharged the burden of proof to the required standard to warrant the issuance of the orders sought in the cross-petition. In support of this submission, the 4<sup>th</sup> Respondent/ cross-petitioner relied on *Kiambu County Tenants Welfare Association v. Attorney General & another* [2017] eKLR and *Edward Akong'o Oyugi & 2 others v. Attorney General* [2019] eKLR. The 4<sup>th</sup> Respondent prayed that the petition be dismissed and the cross-petition be allowed with costs.

### **The 1<sup>st</sup> Interested Party's Submissions**

29. The 1<sup>st</sup> Interested Party in the main petition filed submissions dated 30<sup>th</sup> August 2023. The 1<sup>st</sup> Interested Party submitted that this court had jurisdiction to hear and determine all the issues raised in the petition and the 1<sup>st</sup> Interested Party's counter-claim. In support of this submission, 1<sup>st</sup> Interested Party cited Article 162 (2) of *the Constitution* of Kenya. The 1<sup>st</sup> Interested Party submitted that Plot Nos. 99 and 100 were subdivisions of Kisumu Municipality/Block 11/3. The 1<sup>st</sup> Interested Party submitted that Plot Nos. 99 and 100 were created through survey map F/R No. 190/45. The 1<sup>st</sup> Interested Party submitted that the certificate of lease for Plot No. 100 was made in the 4<sup>th</sup> Respondent's name while the certificate of lease for Plot No. 99 was irregularly issued in the name of



George Okung'u. The 1<sup>st</sup> Interested Party submitted that Plot No. 187 did not exist. The 1<sup>st</sup> Interested Party submitted that Plot No. 187 was created on a road reserve that separated Plot No. 88 (Prosperity House-Nyanza Provincial Head Quarters), Plot No. 99 and Plot No. 100.

30. The 1<sup>st</sup> Interested Party submitted that the Director of Physical Planning had not prepared a Part Development Plan (PDP) for the allocation of the suit properties. The 1<sup>st</sup> Interested Party submitted that the suit properties were not unalienated government land and were therefore not available for alienation. The 1<sup>st</sup> Interested Party submitted that a PDP could only be prepared for government land that has not been alienated. The 1<sup>st</sup> Interested Party submitted that a PDP is prepared by the Director of Physical Planning, approved by the Commissioner of Lands, assigned an approved physical development plan number and entered in the register. The 1<sup>st</sup> Interested Party submitted that a letter of allotment based on an approved PDP is then issued to the allottee by the Commissioner of Lands. The 1<sup>st</sup> Interested Party submitted that it was after the issuance of the letter of allotment and compliance with the terms thereof that a cadastral Survey could be conducted for the purpose of issuance of a Certificate of Lease. The 1<sup>st</sup> Interested Party relied on several authorities in support of this submission including, *Dina Management Limited v. County Government of Mombasa and others*(supra), *Milankumarn Shar & Two others -v- City Council of Nairobi & Others*, Nairobi HCCC No. 1024 of 2005, *Dr. Joseph Arap Ngok v. Justice Moiyo Ole Keiwa & 5 Others* [1997] eKLR, *Wreck Motor Enterprises v. The Commissioner of Land & Others* [1997] and *Town Council of Awendo v. Nelson Oduor Onyango & Others* [2013] eKLR. The 1<sup>st</sup> Interested Party submitted that the Petitioner did not have a good title to the suit properties. The 1<sup>st</sup> Interested Party submitted that it had proved its counter-claim on a balance of probabilities and urged the court to grant the prayers sought in the counter-claim with costs to be borne by the Petitioner.

31. I have not seen on record the submissions by the 2<sup>nd</sup> Interested Party in the main petition. The court will assume that none was filed.

### **Analysis and determination**

32. I have considered the pleadings, the evidence and the submissions by the parties. I am of the view that the issues arising for determination in the consolidated suits are the following;

1. Whether the Petitioner in the main petition is the lawful owner of all those parcels of land known as Kisumu Municipality/Block 11/99, Kisumu Municipality/Block 11/100 and Kisumu Municipality/Block 11/187(the suit properties).
2. Whether the Respondents in the main petition violated the Petitioner's right to property guaranteed under Article 40 of *the Constitution* concerning Kisumu Municipality/Block 11/100(Plot No.100).
3. Whether the Petitioner is entitled to the reliefs sought in the petition.
4. Whether the 4<sup>th</sup> Respondent/cross-petitioner is entitled to the reliefs sought in its cross-petition.
5. Whether the 1<sup>st</sup> Interested Party is entitled to the reliefs sought in its counter-claim.
6. Whether the 2<sup>nd</sup> Interested Party in the main petition is entitled to the reliefs sought in ELCC No. 767 of 2015.
7. Who is liable for the costs of the consolidated suits?



**Whether the Petitioner in the main petition is the lawful owner of the all those parcels of land known as Kisumu Municipality/Block 11/99, Kisumu Municipality/Block 11/100 and Kisumu Municipality/Block 11/187(the suit properties).**

33. According to the evidence adduced by the Petitioner, the Petitioner acquired Plot No. 99 through purchase from George Okungu on 20<sup>th</sup> December 2003; Plot No. 100 through purchase from Maurice Oduor Omondi attorney of Moses Onyango and George Nyakundi on 19<sup>th</sup> November 2003; and Plot No. 187 through purchase from Dr. Wilfred Mating'a Nyakundi on 8<sup>th</sup> December 2004. George Okungu is said to have sold Plot No. 99 to the Petitioner as a leasehold proprietor thereof from the Government of Kenya for a term of 41 years with effect from 1<sup>st</sup> November 1988. Moses Onyango and George Nyakundi are said to have been allocated Plot No. 100 by the Commissioner of Lands through a letter of allotment dated 16<sup>th</sup> June 1999 while Dr. Wilfred Mating'a Nyakundi is said to have been allocated Plot No. 187 by the Commissioner of Lands through a letter of allotment dated 1<sup>st</sup> July 1999.
34. The Petitioner holds a certificate of lease in respect of Plot No. 99 issued on 22<sup>nd</sup> April 2004 in which it is indicated as the leasehold proprietor of the property from the Government of Kenya for a term of 41 years with effect from 1<sup>st</sup> November 1988. The Petitioner holds a certificate of lease in respect of Plot No. 100 issued on 9<sup>th</sup> December 2003 in which it is indicated as the leasehold proprietor of the property from the Government of Kenya for a term of 99 years with effect from 1<sup>st</sup> July 1999.
35. The Petitioner holds a certificate of lease in respect of Plot No. 187 issued on 15<sup>th</sup> December 2004 in which it is indicated as the leasehold proprietor of the said parcel of land from the Government of Kenya for a term of 99 years with effect from 1<sup>st</sup> July 1999.
36. The suit properties were registered under the Registered Land Act, Chapter 300 Laws of Kenya (now repealed). Sections 27 and 28 of the Registered Land Act, Chapter 300 Laws of Kenya (now repealed), Sections 24, 25 and 26 of the Land Registration Act 2012, and Article 40 of the Constitution relied on by the Petitioner protect a registered proprietor of land. Sections 27 and 28 of the Registered Land Act provide as follows:
27. Subject to this Act -
- (a) the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto;
  - (b) the registration of a person as the proprietor of a lease shall vest in that person the leasehold interest described in the lease, together with all implied and expressed rights and privileges belonging or appurtenant thereto and subject to all implied and expressed agreements, liabilities and incidents of the lease.
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, but subject -
- (a) to the leases, charges and other encumbrances and to the conditions and restrictions, if any, shown in the register; and



- (b) unless the contrary is expressed in the register, to such liabilities, rights and interests as affect the same and are declared by section 30 not to require noting on the register:

Provided that nothing in this section shall be taken to relieve a proprietor from any duty or obligation to which he is subject as a trustee.

37. Sections 24, 25 and 26 of the [Land Registration Act](#) 2012 provide as follows:

24. Subject to this Act—

- (a) the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto; and
- (b) the registration of a person as the proprietor of a lease shall vest in that person the leasehold interest described in the lease, together with all implied and expressed rights and privileges belonging or appurtenant thereto and subject to all implied or expressed agreements, liabilities or incidents of the lease.

25.

- (1) The rights of a proprietor, whether acquired on first registration or subsequently for valuable consideration or by an order of court, shall not be liable to be defeated except as provided in this Act, and shall be held by the proprietor, together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever, but subject—
- (a) to the leases, charges and other encumbrances and to the conditions and restrictions, if any, shown in the register; and
- (b) to such liabilities, rights and interests as affect the same and are declared by section 28 not to require noting on the register, unless the contrary is expressed in the register.
- (2) Nothing in this section shall be taken to relieve a proprietor from any duty or obligation to which the person is subject to as a trustee.

26.

- (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—
- (a) on the ground of fraud or misrepresentation to which the person is proved to be a party; or
- (b) where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.

38. Article 40 of [the Constitution](#) provides that:



- (1) Subject to Article 65, every person has the right, either individually or in association with others, to acquire and own property—
  - (a) of any description; and
  - (b) in any part of Kenya.
- (2) Parliament shall not enact a law that permits the State or any person—
  - (a) to arbitrarily deprive a person of property of any description or of any interest in, or right over, any property of any description; or
  - (b) to limit, or in any way restrict the enjoyment of any right under this Article on the basis of any of the grounds specified or contemplated in Article 27 (4).
- (3) The State shall not deprive a person of property of any description, or of any interest in, or right over, property of any description, unless the deprivation—
  - (a) results from an acquisition of land or an interest in land or a conversion of an interest in land, or title to land, in accordance with Chapter Five; or
  - (b) is for a public purpose or in the public interest and is carried out in accordance with this Constitution and any Act of Parliament that—
    - (i) requires prompt payment in full, of just compensation to the person; and
    - (ii) allows any person who has an interest in, or right over, that property a right of access to a court of law.
- (4) Provision may be made for compensation to be paid to occupants in good faith of land acquired under clause (3) who may not hold title to the land.
- (5) The State shall support, promote and protect the intellectual property rights of the people of Kenya.
- (6) The rights under this Article do not extend to any property that has been found to have been unlawfully acquired.

39. As provided in Article 40(6) of *the Constitution* and the statutes cited above, the protection accorded to a proprietor of land does not apply to all land irrespective of the manner acquired. In *Adan Abdirahani Hassan & 2 others v. Registrar of Tiles & 2 others* [2013] eKLR, the court stated as follows:

“20. Article 40 of the current Constitution, just like section 75 of the repealed Constitution protects the right to own property. This Article should however be read together with the provisions of Article 40(6) which excludes the protection of property which has been found to have been unlawfully acquired. This requirement recognises the fact that *the Constitution* protects certain values such as human rights, social justice and integrity amongst others. These national values require that before one can be protected by *the Constitution*, he must show that he has followed the due process in acquiring that which he wants to be protected.”



40. In *Munyu Maina v Hiram Gathiha Maina* (supra) the court stated that:

“...When a registered proprietor’s root of title is under challenge, it is not sufficient to dangle the instrument of title as proof of ownership. It is this instrument of title that is in challenge and the registered proprietor must go beyond the instrument and prove the legality of how he acquired the title and show that the acquisition was legal, formal and free from any encumbrances including any and all interests which need not be noted on the register.”

41. In *Daudi Kiptugen v Commissioner of Lands & 4 Others* [2015] eKLR the court stated that:

“...the acquisition of title cannot be construed only in the end result; the process of acquisition is material. It follows that if a document of title was not acquired through a proper process, the title itself cannot be a good title. If this were not the position then all one would need to do is to manufacture a Lease or a Certificate of title at a backyard or the corner of a dingy street, and by virtue thereof, claim to be the rightful proprietor of the land indicated therein.”

42. In *Nairobi High Court Civil Suit No. 1024 of 2005(O.S), Milankumar Shah & 2 others v The City Council of Nairobi & another*, the court stated as follows:

“We hold that the registration of title to land is absolute and indefeasible to the extent firstly that the creation of such title was in accord with the applicable law and secondly where it is demonstrated to a degree higher than the balance of probability that such registration was not procured through fraud and misrepresentation to which the person or body which claims and relies on that principle has not himself or itself been part of a cartel which schemed to disregard the applicable law, and the public interest”.

43. I am satisfied from the evidence before me that Plot No. 99 and Plot No. 100 were at all material times held by the 4<sup>th</sup> Respondent/cross-petitioner as the leasehold proprietor thereof. The two parcels of land originated from L.R No. 1148/1310 which was granted to East African Railways on a lease by the Government of Kenya for a term of 99 years with effect from 1<sup>st</sup> January 1932 on 25<sup>th</sup> September 1969 through Grant No. I.R.23058. L.R No. 1148/1310 which was registered under the Registration of Titles Act, Chapter 281 Laws of Kenya was converted to the Registered *Land Act*, Chapter 300 Laws of Kenya (now repealed) and registered as Kisumu Municipality/Block 11/3. See the documents at pages 7 to 20 and 27 of the 1<sup>st</sup> Interested Party’s bundle of documents and pages 1 to 12 of the 4<sup>th</sup> Respondent’s bundle of documents(D.EXH.1). On 14<sup>th</sup> January 1987 and 28<sup>th</sup> July 1987, Prof. Bethwell Ogot, the 2<sup>nd</sup> Interested Party in the main petition and George Okungu respectively applied to the 4<sup>th</sup> Respondent to be allocated residential plots. Kisumu Municipality/Block 11/3 was subsequently subdivided into two, Kisumu Municipality/Block 11/99 and Kisumu Municipality/Block 11/100 (Plot No. 99 and Plot No. 100) and subleased by the 4<sup>th</sup> Respondent to George Okungu and Prof. Bethwell Ogot respectively. See annexures “JO 7i-7m” to the affidavit of Justine Omoke sworn on 21<sup>st</sup> June 2021, pages 13 to 18 of D.EXH.1. and pages 2 to 38 of the Interested Party’s bundle of documents filed on 7<sup>th</sup> April 2021.

44. It is clear from the evidence before the court that Plot No. 99 was owned by the Government of the Kenya as the freehold owner thereof. The Government of Kenya leased the same to the 4<sup>th</sup> Respondent, Kenya Railways Corporation which in turn subleased it to George Okungu. The lease dated 21<sup>st</sup> October 1988 leaves no doubt that Plot No. 99 was subleased to George Okungu by the 4<sup>th</sup> Respondent, Kenya Railways and not by the Government of Kenya. There is also evidence before the



court showing that George Okungu paid the agreed rent to the 4<sup>th</sup> Respondent for several years before he purported to sell the property to the Petitioner in the main petition. There is further evidence that George Okungu charged Plot No. 99 to several banks before he sold the same and that he obtained the consent of the 4<sup>th</sup> Respondent to charge the property leaving no doubt that he was a tenant of the 4<sup>th</sup> Respondent and as such required consent before charging the property. That being the case, there was no way George Okungu could have sold Plot No. 99 as a lessee from the Government of Kenya rather than as a sub-lessee of the 4<sup>th</sup> Respondent. No evidence was placed before the court showing that the Government of Kenya had leased Plot No. 99 to George Okungu. That could not have been possible because the property was already leased to the 4<sup>th</sup> Respondent whose lease had not expired. Through its further list of documents dated 21<sup>st</sup> April 2021 filed on the same date, the Petitioner produced a certificate of lease dated 22<sup>nd</sup> May 1989 for Plot No. 99 in the name of George Joshua Okungu. This was the valid certificate of lease held by George Okungu before he sold Plot No. 99 to the Petitioner. It is explicit on the face of this certificate of lease that Plot No. 99 was leased to George Okungu by the 4<sup>th</sup> Respondent. With this certificate of lease in its possession, it is not clear how and where the Petitioner obtained the certificate of lease dated 22<sup>nd</sup> April 2004 with the Government of Kenya as the lessor which had leased Plot No. 99 to George Okungu which certificate of lease omitted the 4<sup>th</sup> Respondent altogether.

45. It is my finding that Plot No. 99 was subleased by the 4<sup>th</sup> Respondent to George Okungu and that George Okungu required the consent of the 4<sup>th</sup> Respondent to sell the property to the Petitioner. It is also my finding that George Okungu could not sell the property to the Petitioner as the leasehold proprietor thereof from the Government of Kenya. I therefore hold that the purported sale of Plot No. 99 by George Okungu to the Petitioner as the leasehold proprietor thereof from the Government of Kenya, and without the consent of the 4<sup>th</sup> Respondent was illegal null and void. I hold further that the purported certificate of lease issued to the Petitioner on 22<sup>nd</sup> April 2004 in respect of Plot No. 99 purporting that the property was leased by the Government of Kenya to George Okungu and subsequently to the Petitioner is similarly illegal, null and void. In the absence of any explanation of how the Petitioner which was aware that Plot No. 99 was leased to George Okungu by the 4<sup>th</sup> Respondent ended up with a certificate of lease in which the 4<sup>th</sup> Respondent was omitted as the leasehold proprietor of the property, fraud cannot be ruled out of the transaction. For the foregoing reasons, I hold that the Petitioner does not hold a valid title to Plot No. 99.
46. As concerns Plot No. 100, the following is my view: As mentioned earlier in the judgment, the Petitioner is said to have purchased Plot No. 100 from Moses Onyango and Maurice Oduor. The two are said to have been allocated the property by the Commissioner of Lands on 16<sup>th</sup> June 1996 through a letter of allotment of the same date. Moses Onyango and Maurice Oduor are said to have been issued with a lease dated 24<sup>th</sup> December 2002 which was registered on 13<sup>th</sup> January 2003 on which date they were also issued with a certificate of lease. I have made a finding from the evidence on record that Plot No. 100 was at all material times owned by the 4<sup>th</sup> Respondent to which the land was vested through Legal Notice No. 440 of 12<sup>th</sup> July 1963 and Legal Notice No. 24 of 22<sup>nd</sup> February 1986. Plot No. 100 was a portion of Kisumu Municipality/ Block 11/3(Original Number L.R No. 1148/1310). Plot No. 100 came into existence around 9<sup>th</sup> August 1988 following the subdivision of Kisumu Municipality/ Block 11/3(Original Number L.R No. 1148/1310). The evidence on record shows that the 4<sup>th</sup> Respondent offered to lease Plot No. 100 to the 2<sup>nd</sup> Interested Party in the main petition through a letter dated 6<sup>th</sup> October 1988 on terms and conditions contained in that letter. The offer was accepted by the 2<sup>nd</sup> Interested Party. The 4<sup>th</sup> Respondent and the 2<sup>nd</sup> Interested Party entered into a sub-lease dated 18<sup>th</sup> January 1999 which was registered on the same date. The 4<sup>th</sup> Respondent was



issued with a certificate of lease on 18<sup>th</sup> January 1999 with the sub-lease in favour of the 2<sup>nd</sup> Interested Party endorsed thereon on the same date.

47. There is no evidence that between 18<sup>th</sup> January 1999 when the 4<sup>th</sup> Respondent was registered as the leasehold proprietor of Plot No. 100 for a term of 99 years with effect from 1<sup>st</sup> January 1989, and 16<sup>th</sup> June 1999 when the property was purportedly allocated to Moses Onyango and George Nyakundi, the 4<sup>th</sup> the Respondent and its sub-lessee, the 2<sup>nd</sup> Interested Party had surrendered Plot No. 100 to the Government. Section 14 (4) and (5) of the [Kenya Railways Corporation Act](#) provides as follows:

“ 14

- (4) The Corporation may at any time convey, transfer or surrender any land surplus to both its existing and future requirements by a conveyance or a deed of surrender either for, or without consideration: (emphasis added)

Provided that land which was public land or trust land shall be surrendered to the Government and shall not be conveyed or transferred to any other person unless the Minister responsible for lands shall consent and so direct.

- (5) The provisions of subsection (4) shall apply to land vested in the Corporation by any written law, including this Act, as well as to land conveyed to it or otherwise placed at its disposal”.

48. Since Plot No. 100 belonged to the 4<sup>th</sup> Respondent, the same could only be acquired by Moses Onyango and George Nyakundi directly from the 4<sup>th</sup> Respondent, or from the Government in case the same had been surrendered to the Government by the 4<sup>th</sup> Respondent. In the absence of evidence of surrender, Plot No. 100 remained the property of the 4<sup>th</sup> Respondent and was not available for allocation to the said Moses Onyango and George Nyakundi by the Commissioner of Lands. In other words, Plot No. 100 was not unalienated Government land that could be allocated by the Commissioner of Lands. Section 2 of the repealed Government Lands Act, Chapter 280 Laws of Kenya defines “unalienated Government land” as:

“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.”

49. Plot No. 100 had already been leased by the Government to the 4<sup>th</sup> Respondent which had sub-leased it to the 2<sup>nd</sup> Interested Party. The land was not available for further alienation. Due to the foregoing, the purported allocation of Plot No. 100 to Moses Onyango and George Nyakundi by the Commissioner of Lands was illegal, null and void. I agree with the 4<sup>th</sup> Respondent and the 1<sup>st</sup> Interested Party that the purported allocation and issuance of a parallel title to Moses Onyango and George Nyakundi was fraudulent and amounted to abuse of office on the part of the Commissioner of Lands. The Commissioner of Lands who was the custodian of land records in the Republic of Kenya ought to have known that the parcel of land that it purported to allocate to Moses Onyango and George Nyakundi was registered in the name of the 4<sup>th</sup> Respondent and had been sub-leased to the 2<sup>nd</sup> Interested Party in the main petition. Given the flaws attaching to the root of the title that was issued to Moses Onyango and George Nyakundi, it is my finding that they did not acquire a valid title to Plot No. 100. In Henry



Muthee Kathurima v. Commissioner of Lands & Another [2015] eKLR, the Court of Appeal stated that:

“We have considered the provisions of Section 26 of the Land Registration Act in light of the provisions of Article 40(6) of the Constitution and it is our considered view that the concept of indefeasibility of title is subject to Article 40(6) of the Constitution. Guided by Article 40 (6) of the Constitution, we hold that the concept of indefeasibility or conclusive nature of title is inapplicable to the extent that the title to the property was unlawfully acquired.”

50. In Dina Management Limited v. County Government of Mombasa & 5 Others Supreme Court Petition 8 (E010) of 2021 [2023] KESC 30 (KLR) (21<sup>st</sup> April 2023) (Judgment) the Supreme Court stated as follows at paragraphs 108 and 110:

(108) As we have established above, before allocation of the unalienated Government Land, there ought to have been processes to be followed prior. Further, we cannot, on the basis of indefeasibility of title, sanction irregularities and illegalities in the allocation of public land. It is not enough for a party to state that they have a lease or title to the property. In the case of Funzi Development Ltd & Others v County Council of Kwale, Mombasa Civil Appeal No.252 of 2005 [2014] eKLR the Court of Appeal, which decision this Court affirmed, stated that:

“...a registered proprietor acquires an absolute and indefeasible title if and only if the allocation was legal, proper and regular. A court of law cannot on the basis of indefeasibility of title sanction an illegality or gives its seal of approval to an illegal or irregularly obtained title.”

(110) Indeed, the title or lease is an end product of a process. If the process that was followed prior to issuance of the title did not comply with the law, then such a title cannot be held as indefeasible. The first allocation having been irregularly obtained, H.E. Daniel Arap Moi had no valid legal interest which he could pass to Bawazir & Co. (1993) Ltd, who in turn could pass to the appellant.”

51. As I have stated, the allocation of Plot No. 100 to Moses Onyango and George Nyakundi was illegal and fraudulent. This means that the two did not have a valid proprietary interest in Plot No. 100 that they could pass to the Petitioner. The purported proprietary interest that Moses Onyango and George Nyakundi held in the property was null and void. In *Macfoy v. United Africa Co. Ltd.*[1961] 3 All E.R 1169, Lord Denning stated as follows at page 1172 concerning an act which is a nullity:

“if an act is void, then it is in law a nullity. It is not only bad but incurably bad. There is no need for an order of the court to set it aside. It is automatically null and void without much ado, though it is sometimes convenient to have the Court to declare it to be so. And every proceeding which is founded on it is also bad and incurably bad. You cannot put something on nothing and expect it to stay there. It will collapse”.

52. Since the title that Moses Onyango and George Nyakundi had in Plot No. 100 was a nullity, the purported transfer of the same to the Petitioner could not and did not confer upon the Petitioner any valid interest in Plot No. 100. In *Wambui v. Mwangi & 3 others, (Civil Appeal 465 of 2019)* [2021] KECA 144 (KLR) the Court of Appeal stated as follows:

“70. Sixth, the title was also tainted with nullity in that the court process on the basis of which the title to the suit property was anchored was subsequently declared null and void abinitio. The position in law as we have already highlighted



above is that anything founded on nullity is also null and void and of no consequence. The title allegedly vested in the 3rd respondent and subsequently passed on to the appellant having stemmed from court proceedings that were subsequently declared null and void also stood vitiated by the same nullity and of no consequence. The Judge cannot therefore be faulted for stating the correct position in law in the manner done.

71. Seventh, section 80 of the Act is explicit that any title founded on irregularity, unprocedurally or a corrupt scheme stands vitiated. The title purportedly acquired by the 3rd respondent and subsequently passed on to the appellant having been demonstrably shown to have been tainted with fraud, deceit and nullity fits the description of title that has been acquired not only irregularly and unprocedurally but also through a corrupt scheme. The corrupt scheme herein arises from the facts informing the vitiated High Court proceedings which we find no need to rehash but adopt as already highlighted above.
72. In light of all the above, we reiterate that the Judge's reasoning as to why appellant's title to the suit property was vitiated was well founded both in fact and in law and is therefore unassailable."

53. In light of the foregoing, it is my finding that the Petitioner did not acquire a valid title to Plot No. 100.

54. For Plot No. 187, I have perused several survey maps produced in evidence by the 1<sup>st</sup> Interested Party, and a Cadastral Checking Office Report from the Director of Surveys which leave no doubt that the parcel of land was created from a road reserve. The Registry Index Map(RIM) for Kisumu Block 11 also produced in evidence by the Interested Party shows that the insertion of Plot No. 187 into the RIM and its continued existence therein was irregular and legally flawed. The Part Development Plan (PDP) dated 10<sup>th</sup> June 1977, Approved Development Plan No. 233 for the Proposed Provincial Administration Office at Kisumu shows the portion of land now Plot No. 187 as a continuation of Lovers Lane. The Lane was between L.R No. 1148/1310 (converted to Kisumu Municipality/Block 11/3 and subdivided to give rise to Plot No. 99 and Plot No.100) and the land that was proposed for the Provincial Administration Office at Kisumu. The Nyanza Provincial Headquarters Site Plan dated 17<sup>th</sup> November 1988 shows what is now Plot No. 187 as an open space between the then proposed Nyanza Provincial Headquarters and L.R No. 1148/1310(converted to Kisumu Municipality/Block 11/3 and subdivided to give rise to Plot No. 99 and Plot No.100). The Survey Map F/R No. 190/45 through which Plot No. 99 and Plot No. 100 were created following the subdivision of Kisumu Municipality/Block 11/3 shows what is now Plot No. 187 as a road reserve between Plot No. 88 on which Nyanza Provincial Headquarters was to be put up and, Plot No. 99 and Plot No. 100. The revised Part Development Plan Reference No. N9/2000/4, Approved Development Plan No. 706 dated 24<sup>th</sup> May 2000 for the Proposed Site for Provincial Administration Offices and Dicece Offices shows that what was hitherto a road reserve had been converted to Plot No. 187. According to the Cadastral Checking Office Report from the Director of Surveys and the Beacon Certificate, both produced in evidence by the 1<sup>st</sup> Interested Party in the main petition, Plot No. 187 was created in January 1996 following a survey that was conducted by a surveyor one, P.Anyumba. According to these documents, the survey that was done by P.Anyumba was for the purpose of "New grant survey to close road between Plots Nos. 88 and 99 & 100". It is clear from these later two documents that Plot No. 187 was created by closing a road between Plot No. 88 on which stands the Nyanza Provincial Headquarters and Plot No. 88 and Plot No. 100 owned by the 4<sup>th</sup> Respondent.



55. From the foregoing, it is not disputed that Plot No. 187 was created from land that was reserved as a road. A site visit by the court confirmed that Plot No. 187 used to be a road. There is no evidence showing that the procedure of closing a public road was followed before the closure of the subject road and its conversion to Plot No. 187. As I have already stated, the Commissioner of Lands could only allocate unalienated government land. The land from which Plot No. 187 was created was already alienated as a road/road reserve. The same was not available to the Commissioner of Lands for allocation to Wilred Matingá Nyakundi on 1<sup>st</sup> July 1999 who sold the same to the Petitioner on 8<sup>th</sup> December 2004.
56. In *Adan Abdirahani Hassan & 2 others v Registrar of Titles & 2 others* [2013] eKLR, the court stated as follows:

- “ 19. Section 75 of the repealed Constitution recognised the doctrine of public trust which applies to land set aside for public purpose. Such parcels of land are held by the Government in trust for the public and any purported allocation to individuals or legal persons cannot be said to fall under the purview of the protected property pursuant to the provisions of Section 75 of the repealed Constitution. It is true that under section 23 of the Registration of Titles Act cap 281, a title is sacrosanct and indefeasible and can only be challenged on the ground of fraud and misrepresentation. However, any alienation of land contrary to the provisions of section 75 of the repealed Constitution or the provisions of the Government *Land Act* or any other Act of parliament would be null and void ab initio.
20. Article 40 of the current Constitution, just like section 75 of the repealed Constitution protects the right to own property. This Article should however be read together with the provisions of Article 40(6) which excludes the protection of property which has been found to have been unlawfully acquired. This requirement recognises the fact that *the Constitution* protects certain values such as human rights, social justice and integrity amongst others. These national values require that before one can be protected by *the Constitution*, he must show that he has followed the due process in acquiring that which he wants to be protected.
24. There has been a long chain of authorities by the High Court which have stated that the Registrar of Titles or the Registrar of Lands, as the case may be, has no authority to cancel a title. My take is that the Commissioner of Lands or his subordinates, while alienating Government land, can only do so over unalienated Government land as defined in *the Constitution* and under the repealed Government of Lands Act. The Commissioner of Lands or his subordinates cannot purport to alienate land which has already been set aside for public purpose.
25. Any alienation of land reserved for public purpose and issuance of a title for the same, whether under the Registration of Titles Act, cap 281 or the Registered *Land Act*, cap 300 is null and void ab initio. Such a title does not exist in the first place because the land belonged to the Public and was not available for alienation. The cancellation of such a “title,” which is not a title as known in law because it should not have been issued in the first place, would be an administrative exercise by the Commissioner of Lands or the Registrar of



Titles to rectify the mistake or misrepresentation that was made by the same office.

26. This is the position that was taken by Justices J.G. Nyamu and R. Wendo in Miscellaneous Civil Application *No. 1732 of 2004*; James Joram Nyaga & Another -Vs- The Hon. Attorney General and two others where they held as follows:-
57. The Commissioner of Lands cannot have purported to pass any valid title under the Government Lands Act or the Registration of Titles Act when acting contrary to the express constitutional provisions. The question of fraud under section 23 of the Registration of Titles Act does not therefore arise and there would be no need to prove it in this case... The applicants have challenged the process by which the land was repossessed from them. From our findings above, the Applicants had no title to the land and the result is that the action of the Respondent was not a compulsory acquisition of that land. The land belonged to the public and the custodians were the Respondents. The notices issued by the Respondent were proper and sufficient time was given for verification for those who ought to have been in doubt of their titles...Due process was followed in the repossession of the suit land.””
58. It is my finding that the creation of Plot No. 187 from land reserved for a public road and allocation of the same to Wilred Mating’a Nyakundi was illegal. The fact that Plot No. 187 was created illegally and fraudulently can also be gleaned from the Registry Index Map (RIM) that was produced in evidence by the 1<sup>st</sup> Interested Party in the main petition. According to this RIM, Plot No. 187 was first entered in the RIM on 21<sup>st</sup> May 1997. It is indicated that Plot No. 187 came about following the consolidation of Plot Nos. 152, 153 and 154. This information is contrary to the information from the Director of Surveys which showed that the Plot was created from the closure of a road between Plot Nos. 88, 99 and 100, a position which is supported by all the survey maps produced in evidence. It is indicated further that Plot No. 187 was subsequently subdivided on 31<sup>st</sup> May 1997 to give rise to Plot Nos. 188 to 196. In my view, Plot No. 187 could not have been created following the amalgamation or consolidation of the said three plots. Plot No. 187 could not also have been subdivided while it remained intact in the RIM. All this erroneous information given in the RIM points to the irregular and fraudulent manner in which Plot No. 187 was created and entered in the RIM.
59. Plot No. 187 having been created and allocated illegally to Wilred Mating’a Nyakundi, Wilred Mating’a Nyakundi did not acquire a valid interest in the property. His purported leasehold interest in the property was a nullity. He therefore had no title to the property that he could transfer to the Petitioner. Since Wilred Mating’a Nyakundi held a void title in respect of Plot No. 187, that was what he transferred to the Petitioner. It is my finding that the Petitioner did not have a valid title to Plot No. 187 and as such is not the lawful owner of the property.

**Whether the Respondents in the main petition violated the Petitioner’s right to property guaranteed under Article 40 of *the Constitution* in relation to Kisumu Municipality/Block 11/100 (Plot No. 100).**

60. I have made a finding that the Petitioner does not have a valid proprietary interest in Plot No. 100. I have found the title held by the Petitioner regarding the property a nullity. The property is lawfully owned by the 4<sup>th</sup> Respondent who has sub-leased it to the 2<sup>nd</sup> Interested Party in the main petition. *The constitution* does not protect illegal and fraudulent property interests. The Respondents in the main petition could not have violated the Petitioner’s non-existent rights in Plot No. 100.



**Whether the Petitioner is entitled to the reliefs sought in the petition.**

61. From my findings above, the Petitioner in the main petition has not made a case for the grant of the reliefs sought in its petition.

**Whether the 4<sup>th</sup> Respondent/cross-petitioner is entitled to the reliefs sought in its cross-petition.**

62. From the evidence adduced and the findings that I have made above, I am satisfied that the 4<sup>th</sup> Respondent/cross-petitioner has made a case for the grant of prayers (a), (b), (c), (d), (f), (g), (h) and (i) in the cross-petition dated 21<sup>st</sup> June 2021.

**Whether the 1<sup>st</sup> Interested Party is entitled to the reliefs sought in its counter-claim.**

63. From the evidence on record and the findings the court has made above, I am satisfied that the 1<sup>st</sup> Interested Party is entitled to the reliefs sought in its counter-claim. I will however not grant an order for the rectification of the registers for Plot No. 99 and Plot No. 100 since the same order will be granted in favour of the 4<sup>th</sup> Respondent in the petition. I will also not make an order for registration of Kisumu Municipality/Block 11/ 187 in the name of the 4<sup>th</sup> Respondent as sought by the 1<sup>st</sup> Interested Party since the property was a road reserve and did not belong to the 4<sup>th</sup> Respondent.

**Whether the 2<sup>nd</sup> Interested Party in the main petition is entitled to the reliefs sought in ELCC No. 767 of 2015.**

64. I am satisfied from the evidence adduced in the consolidated suits that a case has been made for the grant of the reliefs sought by the 2<sup>nd</sup> Interested Party in the main petition in his further amended plaint dated 16<sup>th</sup> July 2013 in ELCC No. 767 of 2015 save for damages for trespass. There is no evidence that any of the Defendants in ELCC No. 767 of 2015 entered Plot No. 100. When the court visited the suit properties, all were found vacant and undeveloped. The court has noted that most of the reliefs sought by the 2<sup>nd</sup> Interested Party in the main petition, in ELCC No. 767 of 2015 have also been sought by the other parties.

**Who is liable for the costs of the consolidated suits?**

65. Cost is at the discretion of the court. In Halbury's Laws of England, 4<sup>th</sup> Edition (Re-issue), [2010] Vol. 10, para 16 the authors have stated as follows:

"The Court has discretion as to whether costs are payable by one party to another, the amount of those costs, and when they are to be paid. Where costs are in the discretion of the Court, a party has no right to costs unless and until the Court awards them to him and the Court has an absolute and unfettered discretion to award or not to award them. This discretion must be exercised judicially; it must not be exercised arbitrarily but in accordance with reason and justice".

66. In Cecilia Karuru Ngayu v. Barclays Bank of Kenya & another [2016] eKLR, the court adopted the decision in Republic v. Rosemary Wairimu Munene, Ex-Parte Applicant and Ihururu Dairy Farmers Co-operative Society Ltd where it was held that:

"The issue of costs is at the discretion of the court as provided under the above section. The basic rule on attribution of costs is that costs follow the event...It is well recognized that the principle costs follow the event is not to be used to penalize the losing party; rather it



is for compensating the successful party for the trouble taken in prosecuting or defending the case.”

67. Although the Petitioner in the main petition has not succeeded in its claim, I am of the view that he was a victim of fraudsters who colluded with the officers at the office of the Commissioner of Lands in Nairobi and the Land Registry at Kisumu to defraud him. I will award the costs of the petition and cross-petition to the 4<sup>th</sup> Respondent to be paid by the Attorney General who is the 3<sup>rd</sup> Respondent in the main petition and the 4<sup>th</sup> Respondent in the cross-petition, and the 1<sup>st</sup> and 2<sup>nd</sup> Interested Parties in the cross-petition. The 1<sup>st</sup> Interested Party in the main petition shall bear its own costs of the petition and its counter-claim since it is a government institution that stepped in to clear the mess that was created as a result of fraudulent collusion of government officers. With regard to ELCC No. 767 of 2015, I will award the costs to the Plaintiff to be paid by the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants, and the 4<sup>th</sup> Defendant in the suit, the National Land Commission.

## Conclusion

68. In conclusion, I now make the following orders in the consolidated suits;
- a. The Petitioner in the main petition, Mayfair Holdings Limited’s petition dated 22<sup>nd</sup> March 2019 is dismissed.
  - b. I declare that the conduct and actions of the Respondents in the cross-petition contravened *the constitution* and infringed upon the cross-petitioner’s fundamental rights and freedoms guaranteed under articles 2(1), (2), 3(1), 10 (1), (2), 22(1), 23(1), 40 and 47 of *the Constitution*.
  - c. I declare that the cross-petitioner, Kenya Railways Corporation is the legitimate leasehold proprietor of the parcels of land known as Kisumu Municipality Block 11/99 and Kisumu Municipality Block 11/100 subject to the sub-leases registered against the titles.
  - d. I declare that the conduct and actions of the 1<sup>st</sup> Respondent in the cross-petition of claiming ownership and possession of the parcels of land known as Kisumu Municipality Block 11/99 and Kisumu Municipality Block 11/100 is unlawful and constitute trespass and illegal encroachment on the cross-petitioner’s property thus a violation of its right to property.
  - e. I declare that the actions of the Respondents in the cross-petition whether jointly or severally of purporting to transfer/register the parcels of land known as Kisumu Municipality Block 11/99 and Kisumu Municipality Block 11/100 in favour of the 1<sup>st</sup> Respondent in the cross-petition were unconstitutional and adverse to the interest of the cross-petitioner.
  - f. I issue an order of mandamus compelling the 2<sup>nd</sup> Respondent in the cross-petition to cancel the leases and certificates of leases for the parcels of land known as Kisumu Municipality Block 11/99 and Kisumu Municipality Block 11/100 issued in favour of the 1<sup>st</sup> Respondent in the cross-petition and the persons from whom it acquired the same.
  - g. I issue an order of mandamus compelling the 2<sup>nd</sup> Respondent in the cross-petition to rectify the registers of the parcels of land known as Kisumu Municipality Block 11/99 and Kisumu Municipality Block 11/100 by cancelling the registration of the 1<sup>st</sup> Respondent in the cross-petition and the persons from whom it acquired the same as the leasehold proprietors thereof and restoring the cross-petitioner as the leasehold proprietor thereof from the Government of Kenya with sub-leases created in favour of George Okungu and Prof Bethwel Ogot for the terms contained in the lease in favour of the cross-petitioner and the said sub-leases.



- h. I issue a permanent injunction restraining the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents in the cross-petition jointly and severally from interfering with or in any other way dealing with the parcels of land known as Kisumu Municipality Block 11/99 and Kisumu Municipality Block 11/100 to the detriment of the cross-petitioner's interest therein.
- i. I issue a permanent injunction restraining the 1<sup>st</sup> Respondent in the cross-petition, its agents and/or servants from entering, occupying, selling, transferring, encumbering, wasting and /or otherwise interfering with the cross-petitioner's quiet possession, use and/or enjoyment of the parcels of land known as Kisumu Municipality Block 11/99 and Kisumu Municipality Block 11/100 to the detriment of the cross-petitioner's right as the proprietor thereof.
- j. I issue an order of permanent injunction restraining the Petitioner in the main petition/1<sup>st</sup> Respondent in the cross-petition either by itself, its servants, agents, representative or anyone acting through it from leasing, transferring, charging, entering upon, developing, or in any other manner howsoever dealing with the parcel of land known as Kisumu Municipality Block 11/187.
- k. I declare that the registration of leases for the parcels of land known as Kisumu Municipality Block 11/99, Kisumu Municipality Block 11/100 and Kisumu Municipality Block 11/187 in the name of the Petitioner in the main petition/1<sup>st</sup> Respondent in the cross-petition/3<sup>rd</sup> Defendant in ELC No. 767 of 2015, Mayfair Holdings Limited was null and void ab initio and ineffectual to confer any right, interest or title upon it.
- l. I declare that the parcel of land known as Kisumu Municipality Block 11/187 was a road reserve.
- m. I order the County Land Registrar Kisumu, the 2<sup>nd</sup> Respondent in the cross-petition to rectify the register for the parcel of land known as Kisumu Municipality Block 11/187 by cancelling the leases and certificates of leases issued to the Petitioner in the main petition and the persons from whom it acquired the same and restore the Government of Kenya as the sole owner of the property to be held by the Government for a road.
- n. I declare that Prof. Bethwel A. Ogot, the Plaintiff in ELC No. 767 of 2015/2<sup>nd</sup> Interested Party in the main petition is the proprietor of a sub-lease from Kenya Railways Corporation, the cross-petitioner in the main petition in respect of the parcel of land Kisumu Municipality Block 11/100 and is entitled to immediate possession and user thereof.
- o. I declare that the certificate of lease issued to and being held by Mayfair Holdings Limited, the Petitioner in the main petition/1<sup>st</sup> Respondent in the cross-petition/3<sup>rd</sup> Defendant in ELC No. 767 of 2015 for Kisumu Municipality Block 11/100 was obtained fraudulently and as such is null and void and conferred no title upon it.
- p. The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants in ELC No. 767 of 2015 shall hand over possession of the parcel of land known as Kisumu Municipality Block 11/100 to Prof. Bethwel A. Ogot if they are in possession thereof in default of which Prof. Bethwel A. Ogot shall be at liberty to apply for their eviction therefrom.
- q. The 4<sup>th</sup> Respondent in the main petition/the cross-petitioner shall have the costs of the petition and cross-petition to be paid by the Attorney General, the 3<sup>rd</sup> Respondent in the main petition/4<sup>th</sup> Respondent in the cross-petition, and the 1<sup>st</sup> and 2<sup>nd</sup> Interested Parties in the cross-petition.



- r. The 1<sup>st</sup> Interested Party in the main petition shall bear its own costs of the Petition and the counter-claim.
- s. Prof. Bethwel A. Ogot, the Plaintiff in ELC No. 767 of 2015/2<sup>nd</sup> Interested Party in the main petition shall have the costs of ELC No. 767 of 2015 to be paid by the 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> Defendants in ELC No. 767 of 2015.

**DELIVERED AND DATED AT KISUMU ON THIS 26<sup>TH</sup> DAY OF SEPTEMBER 2024**

**S. OKONG'O**

**JUDGE**

Judgment delivered virtually through Microsoft Teams Video Conferencing Platform in the presence of:

Mr. Kanjama S.C and Mr. Ojuro for the Petitioner

N/A for the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents

Ms. Moraa for the 4<sup>th</sup> Respondent

Ms. Kakuvi for the 1<sup>st</sup> Interested Party

Mr. Odhiambo for the 2<sup>nd</sup> Interested Party

Ms. J.Omondi-Court Assistant

