



Nyaberi, Opondo, Hassan and Mwangi (Suing in their Capacity as the Chairman, Secretary, Treasurer and Member of the Ngei Tenants Welfare Association-Nakuru) & 3 others v County Government of Nakuru & 3 others; Lagat (Interested Party) (Environment & Land Case 28 of 2019) [2024] KEELC 6041 (KLR) (20 September 2024) (Judgment)

Neutral citation: [2024] KEELC 6041 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE 28 OF 2019**

**A OMBWAYO, J
SEPTEMBER 20, 2024**

BETWEEN

**ERIC MUGAMBI NYABERI, AMOS AWENDO OPONDO, FRANCIS WANJOHI
HASSAN AND NANCY MWANGI (SUING IN THEIR CAPACITY AS THE
CHAIRMAN, SECRETARY, TREASURER AND MEMBER OF THE NGEI
TENANTS WELFARE ASSOCIATION-NAKURU) 1ST PLAINTIFF**

FRANCIS HASSAN WANJOHI 2ND PLAINTIFF

FLORENCE NZULA MOUNDE 3RD PLAINTIFF

BETH WANGARI NJOROGE 4TH PLAINTIFF

AND

COUNTY GOVERNMENT OF NAKURU 1ST DEFENDANT

LOCAL AUTHORITIES PENSION TRUST (LAPTRUST) 2ND DEFENDANT

CPF FINANCIAL SERVICE LIMITED 3RD DEFENDANT

LAND REGISTRAR, NAKURU 4TH DEFENDANT

AND

ANDREW LAGAT INTERESTED PARTY



JUDGMENT

Introduction

1. The Plaintiffs commenced this suit vide an Amended Plaint dated 21st February, 2020 against the Defendants seeking the following orders:
 - a. A declaration that the 1st Plaintiffs are lawful tenants and beneficial owners of in the parcels of land known as Nakuru Municipality Block 4/224 (Ngei Estate Phase I) and its sub-sequent sub-divisions namely Nakuru Municipality Block 4/405, 406,407, 408, 410, 412, 413, 414, 415, 416, 418, 419, 420, 421, 422, 424, 425, 426, 427,428, 429, 430, 431, 432, 433, 434, 435, 436, Nakuru Municipality Block 4/237 Nakuru Municipality Block4/247 (Ngei Estate Phase II), Nakuru Municipality Block 4/248 (Ngei - Phase II) and Nakuru Municipality Block 4/249 (Ngei Estate Phase II) (Ngei Estate Phase II) and they are entitled to adequate notices before any event and or action is taken with respect to their tenancy.
 - b. A declaration that the 2nd – 4th plaintiffs are the rightful owners of those parcels of land known as Municipality Block 4/410, 411, 417 and 423 [subdivisions of Nakuru Municipality block 4/224 (Ngei Estate Phase I)] and Nakuru Municipality Block 4/240 (Ngei Estate Phase II) and an order of cancellation of the certificate of leases issued to the 2nd Dendant with respect to parcels of land known as Nakuru Municipality Block 4/224 (Ngei Phase I) and Nakuru municipality Block 4/240 (Ngei Phase II)
 - c. A permanent injunction restraining the Defendants by themselves, their agents and or servants from trespassing, selling, advertising for sale, leasing, interfering, blocking, and or dealing, interfering in any way with the parcel of land known as Municipality Block 4/410, 411, 417 and 423 [sub-divisions of Nakuru Municipality block 4/224 (Ngei Estate Phase) and Nakuru Municipality Block 4/240 (Ngei Estate Phase II)].
 - d. A declaration that the purported transfer of parcels of land known as Nakuru -Municipality Block 4/224 (Ngei Estate Phase I) and its subsequent sub-divisions, Nakuru Municipality Block 4/405-436 (Ngei Phase I) , Nakuru Municipality Block 4/236 (Ngei Estate Phase II), Nakuru Municipality Block 4/237 (Ngei Estate Phase II), Nakuru Municipality Block 4/240 (Ngei Estate Phase II) Nakuru Municipality Block 4/247 (Ngei Estate Phase II) Nakuru Municipality Block 4/248 (Ngei Estate Phase II) and Nakuru Municipality Block 4/249 (Ngei Estate Phase II) by the 1st Defendant to the 2nd Defendant was fraudulent and is therefore null and void and of no legal consequence.
 - e. The title deed issued to the 2nd Defendant for the parcels of land known as Nakuru Municipality Block 4/224 (Ngei Estate Phase I) and its subsequent sub-divisions, Nakuru Municipality Block 4/405-436 (Ngei Phase I), Nakuru Municipality Block 4/236 (Ngei Estate Phase II), Nakuru Municipality Block 4/237 (Ngei Estate Phase II) Nakuru Municipality Block 4/240 (Ngei Estate Phase II) Nakuru Municipality Block 4/247 (Ngei Estate Phase II), Nakuru Municipality Block 4/248 (Ngei Estate Phase II) and Nakuru Municipality Block 4/249 (Ngei Estate Phase II) be declared a nullity and consequently cancelled.
 - f. A Permanent injunction restraining the 1st Defendant from selling, alienating or disposing the parcels of land known as Nakuru Municipality Block 4/224 (Ngei Estate Phase 1) and its subsequent sub-divisions, Nakuru Municipality Block 4/405-436 (Ngei Phase I), Nakuru Municipality Block 2/236 (Ngei Estate Phase II), Nakuru Municipality Block 4/237 (Ngei



Estate Phase II, Nakuru Municipality Block 4/240 (Ngei Estate Phase II), Nakuru Municipality Block 4/247 (Ngei Estate Phase II), Nakuru Municipality Block 4/248 (Ngei Estate Phase II) and Nakuru Municipality Block 4/249 (Ngei Estate Phase II) to anyone, other persons or entities other than the 1st plaintiffs.

- g. An order of specific performance compelling the Defendants to honour the “commitment to purchase” agreements and sell the parcels of land known as Nakuru Municipality Block 4/224 (Ngei Estate Phase 1) and its subsequent sub-divisions, Nakuru Municipality Block 4/405-436 (Ngei Estate Phase I), Nakuru Municipality Block 4/236 (Ngei Estate Phase II), Nakuru Municipality Block 4/237 (Ngei Estate Phase II), Nakuru Municipality Block 4/240 (Ngei Estate Phase II), Nakuru Municipality Block 4/247 (Ngei Estate Phase II), Nakuru Municipality Block 4/248 (Ngei Estate Phase II) and Nakuru Municipality Block 4/249 (Ngei Estate Phase II) to the 1st Plaintiffs.
 - h. Cost and interest at court rates.
 - i. Any such other or further relief this honourable court would deem fit to grant.
2. The 1st Defendant entered appearance and filed its statement of defence dated 13th November, 2019 where it denied the allegations in the plaint.

Plaintiffs’ Case

3. Francis Wanjohi Hassan testified as PW1 where he adopted his witness statement dated 22nd February 2019. He also produced copies of the title deeds marked as P-exhibits 1(a) and 1 (b) and his list of documents dated 22nd February 2019 marked as PEX1- PEX35. He testified that he resides in Nakuru Ngei Estate plot No. Nakuru Municipality Block 4/410 and that he is the 1st Plaintiff’s treasurer. He further produced an area Survey map marked as PEX36. He was referred to page 199 of the plaintiffs’ bundle where he testified that he was issued with a demand notice for plot No. Nakuru Municipality Block 4/411. He added that there was also a rates demand notice for plot No. Nakuru Municipality Block 4/ 410, the house he resides in and also for plot Nakuru Municipality Block 4/413. It was his testimony that the demand notices were issued by the 1st Defendant. He was again referred to the bundle at page 205 where he testified that there was a letter from the director of surveys to the Commissioner of Lands with respect to amendment of RIM block IV Nakuru. He testified that from the map PEX36, the RIM carried the plots they claim Nakuru Municipality Block 4/(405-436) and that plot No. Nakuru Municipality Block 4/224 was subdivided to create plot Nos. Nakuru Municipality Block 4/405- 436. He further testified that the lease for land Block Nakuru Municipality Block 4/224 issued on 29th June, 2009 had been subdivided into 32 plots in March 2001 as per the RIM.
4. It was his testimony that he was issued with a title for land parcel Block Nakuru Municipality Block 4/411 and that he has severally charged it to secure financing from banks. PW1 was shown page 19 of the 2nd and 3rd defendants bundle of documents where he testified that he was not in agreement with the search on parcel Nakuru Municipality Block 4/224 which showed that it belonged to the 1st Defendant. He further states that he leased part of the space to Airtel which pays him an annual rent of Kshs.182,000/= and that he has resided in Ngei Estate for over 30 years. It was his testimony that the 4th Defendant owned plot Nakuru Municipality Block 4//240 while the 3rd Defendant owned four plots including Nos 417 and 423. He added that block 4/236 was owned by one Marochi and Land parcel Nakuru Municipality Block 4/237, 240, 247 and 249 owned by the 1st Defendant. He testified that the plot had tenants. It was his testimony that the notice of expression of interest provoked them to file the instant case since they had houses and had not been consulted.



5. PW1 went on to testify that the notice indicated that the 2nd and 3rd Defendants intended to redevelop Ngei I and Ngei II Nakuru where they all reside. He added that they were concerned since the intention was to demolish their houses without notice. It was his testimony that the 1st Defendant had promised to sell them the houses and that they had signed commitment letters. He added that they had started the Association with a view of acquiring the houses. He further testified that he had a title for Nakuru Municipality Block 4/411 which he had applied to be allocated in 1996. He testified that the plot was unsurveyed at the time he was allocated.
6. It was his testimony that the allotment letter for plot No Block 4/9 Ngei was issued on 24th February, 1997 and that of Nakuru Mun/Block /UN.9 was dated 28th October, 1996. He added that he paid all the dues as per the letter of allotment of Kshs 8,350. He also testified that he paid the rates as evidenced in the receipts. He testified that the survey plan FR 285 confirmed that he was the owner of plot No. 411. The plan related to cancellation of parcels 404 to 436. He further testified that the plans also confirmed that plot No.224 was subdivided to create parcel 404-436. It was his testimony that the lease for plot Nakuru Municipality Block 4/411 was issued to him on 5th May, 2000 by the Mayor the Town Clerk. He added that the lease was registered and that he was issued with a certificate of lease dated 5th May, 2000.
7. PW1 testified that on 26th June, 2019 he obtained a certificate of official search which showed that he was the registered owner. He testified that he had charged the title to AFC to secure Kshs1 million. He testified that Ngei Estate has over 100 families who have lived there for over 30 years. PW1 was referred to page 108 of the original bundle where he testified that the same was a commitment letter dated 25th August, 2008 to purchase from the 1st Defendant to the tenants. He testified that they were asked to await communication from the council. He added that initially, they were paying rent to the 1st Defendant then later to the 2nd Defendant. It was his testimony that they were committed to purchase the properties and even formed a group. He testified that they were never involved in the discussions between the 1st and 2nd Defendant.
8. Upon cross examination by Mr. Kinuthia learned counsel for the 1st Defendant, PW1 stated that his claim was for plot No.411 and parcel No.410 where he resided as a tenant. He stated that the amendment related to parcels no Nakuru Municipality Block 4/405-436. He confirmed that he had the title to parcel Nakuru Municipality Block 4/411 and that parcel Nakuru Municipality Block 4/410 was where the house was located. He further confirmed that Block Nakuru Municipality Block 4/224 was subdivided into 32 plots whereby 20 of the plots had houses with tenants. He stated that the 2nd Defendant wanted to redevelop the plots and had invited other investors to express their interest. He added that the 2nd Defendant had to carry out a feasibility, stakeholder engagement. He stated that he had applied for allocation but confirmed that he did not have the copy of application. PW1 admitted that he had no document that showed the 1st Defendant invited applications. He further admitted that he did not have a ballot for plot Nakuru Municipality Block 4/411.
9. He stated that he did not have a beacon certificate and that the payment of the allotment letter dated 28th October, 1996 was made in 1997. He also admitted that page 2 of the allotment letter was not signed. He confirmed that land parcel Nakuru Municipality Block 4/224 was transferred to the 2nd Defendant in 2010. He further confirmed that as per 14th March, 2001 there was no request by the 1st Defendant to subdivide parcel 224. He admitted that he did not have the original lease. PW1 admitted that he did not have a copy of the approval for the registered lease for parcel No. Nakuru Municipality Block 4/411. He added that the property was charged to the AFC and that the 1st Defendant's consent was not exhibited. He stated that the RIM did not have a certification stamp.



10. Upon cross examination by Mrs Mbaabu for the 2nd and 3rd Defendants, He stated that his interest is that of the Association and himself. He added that the association was not claiming any property but representing the interests of the members. He admitted that he did not have evidence to show that he was an official of the association. He stated that they became aware of the transaction between the 1st and 2nd Defendant in 2010. He added that they started paying rent to the 2nd Defendant. He further stated that they did not immediately seek court intervention but filed the instant suit in 2019. He stated that Land parcel Nakuru Municipality Block 4/410 had a title but he had not availed it in court. He admitted that he only had 4 titles before the court, his own and 3 for the 3rd Defendant. He stated that titles for parcels 405-436 were in other peoples' names who were necessarily not residents. He admitted that the holders of titles ought to have been enjoined in the suit as parties. PW1 confirmed that he did not have evidence to show that Block 4/9/ Ngei changed to Block 4/411. He added that it was not clear how Block 4/UN9 converted to Block 4/411. He admitted that the RIM did not have a certification stamp. He stated that Block 4/405-436 was as a result of Block 4/224. He further stated that FR 285/84 was a subdivision of the original Block 4/224. He confirmed that 405-436 while FR 285/84 showed parcels 404-436. PW1 further confirmed that execution date of the lease was not indicated. He admitted that the lease in favour of Kenya Towers was not registered. He further admitted that he did not have a commitment letter of purchase. He stated that he resides on parcel Nakuru Municipality Block 4/410 which title was held by one, Mohamed Attan who was not a member of the association. PW1 admitted that there were some owners who were not members of the Association. He confirmed that they had not given authority for institution of the suit Land parcel.
11. He stated that their claim was for Block 4/237 and that there were tenants who had given authority to sue. He confirmed that land parcels Block 4/224 and Block 4/237 was issued in favour of the 1st Defendant on 15th April, 1982. He stated that he was not paying rent to the 2nd Defendant when he discovered he did not have title to the land. He stated that he paid the allotment charges one year after the letter of allotment.
12. On re examination by Mr. Karuku, PW1 stated that the 2nd Defendant had no mandate to acquire land and that he was never involved when the 2nd Defendant bought the suit property. He stated that he obtained the survey map from the surveyor officers in Thika road. He further stated that the title deed from plot 411 was never challenged in court.
13. Beth Wangati testified as PW2 where her witness statement dated 22nd February, 2019 at page 184/185 of the plaintiffs record was adopted as her evidence in chief. She testified that she was allocated plot 4/240 vide the letter dated 6th April, 1977 where she built a nursery school and which the 1st Defendant licensed and approved the same. She testified that she paid all the land rates and added that she was never issued with the title. It was her testimony that the 1st Defendant never consulted her when they gave the 2nd Defendant their property. She testified that the 1st Defendant could not give another person the title allocated to her.
14. Upon cross examination by Mr. Kinuthia for the 1st Defendant, she confirmed that she did not know when the 1st Defendant transferred the land to the 2nd Defendant. She stated that she was only informed that some people wanted to take her plot. She admitted that she did not know the size. She stated that she gave her original documents to someone in the 1st Defendant's office to process the title.
15. Upon cross examination by Mrs. Mbaabu for the 2nd and 3rd Defendant's, PW2 admitted that she had no title for plot No.240. She stated that the plot was about 1 ½ acres. She confirmed that she had paid the allotment charges but admitted that she had no receipts. She stated that she was given the land to build a nursery school. She stated that she found houses on the suit land built by the 1st Defendant.



- She confirmed that currently, the nursery school is not running but that there was a college being run by the son. She confirmed that Betty and Beth are both her names. Upon cross examination by Ms. Ngaira for the Attorney General, she stated that her complaint against the 4th Defendant was failure to process the title. Upon re-examination, she stated that she did not know that the 2nd Defendant had the title to plot No.240. She also stated that she had paid rates for the whole plots.
16. Florence Nzula Mounde testified as PW3 where her witness statement dated 22nd February, 2019 was adopted as her evidence in chief. She testified that she owned 3 plots at Ngei which she purchased from persons who had been allocated. She testified that the plots are Block 4/423 with the title dated 17th August 2001 with the other two as evidenced from the sale agreements at pages 39 to 42 supplementary bundle. She testified that for the 2 plots, titles were in her name as evidenced in pages 31-38 of the bundle. She testified that she paid Kshs. 20,800/= as land rates. She testified that the 2nd Defendant had claimed ownership of her 3 plots without any notice. She added that she still had titles to the properties which have not been nullified.
 17. Upon cross examination by Mr. Kinuthia, PW3 confirmed that she had not constructed any houses on the said properties. She added that she bought the said plots from the councillors of the Municipal Council. She also confirmed that she only had 2 titles to the plots. She admitted that she did not have any evidence to confirm that the Municipal council did the subdivision.
 18. Upon cross examination by Mrs. Mbaabu, PW3 stated that balance of the purchase price was to be paid after acquisition of title. She stated that she paid the balance on 18th December, 1996. PW3 admitted that she did not sign any transfer. She also admitted that the title at page 31 did not show the name of the vendor. She stated that the Municipal council gave her a certificate of lease for Block 4/224 dated 29th June, 2009. She also admitted that Block 4/423 was not a subdivision of 4/224. She further admitted that she did not have the consent for the plot to be transferred to her. She stated that the Municipal council had the title to plot 224 and there was nothing that could have prevented them from transferring it to the 2nd Defendant.
 19. Upon re-examination by Mr. Karuku she stated that she could not recall whether she paid the stamp duty for transfer of plot BLOCK 4/5. She was referred to the receipt at page 48 on payment of charges where she stated that the payment related conveyancing charges and included stamp duty. She stated that as per the receipts at page 47, the payments related to clearance certificate and stand premium. She further stated that there was no transfer of lease to the 1st Defendant. She added that the 1st Defendant never notified them of any transfer. This marked the close of the Plaintiff's case.

1st Defendant's case

20. Wilson Waweru Kinyua testified as DW1 where his witness statement dated 12th November, 2019 was adopted as his evidence in chief. He testified that in the previous council he was an Administrative Assistant in June, 1987 by the defunct Municipal council of Nakuru. He testified that the present suit related to properties owned by the defunct Municipal known as Ngei Estate. He testified that the properties were transferred to the 2nd Defendant to repay the debt owed to them. He further testified that there was an agreement a per DEX2 on payment of the debt. He testified that the process was followed in transferring the property to the 2nd Defendant and that all the necessary approvals were obtained. It was his testimony that the council passed a resolution authorising the sale and ministering approval was accorded as per DEX4. He testified that the Municipal council sought and obtained the commissioner of Lands for the transfer as per DEX6. He also testified that all land rents due was paid to the government before transfer as evidenced from the invoices dated 25th May, 2010, (DEX8). He further testified that the Commissioner of Lands issued rent clearance certificates dated 2nd June, 2010,



- (DEX11). He went on to testify that transfer was assessed and stamp duty of Kshs. 8,360,140/= paid. DW1 testified that the tenants were informed about the transfer and introduced to the new Land lord. He added that there was an advert in the Daily Nation newspaper on 22nd June, 2010. He testified that the new Landlord introduced themselves to the tenants vide a letter dated 1st July 2010 (DEX14). He added that due process was followed in transferring the properties to the 2nd Defendant.
21. DW1 testified that in case there was intention to allocate the houses to the Plaintiffs, the council would have made a resolution to subdivide and that the minster for local government would have been required to give approval for the subdivision and transfer to private individuals. He added that the head title would also have been surrendered and the council to advertise for allocation of plots. He testified that the plots would then be allocated through balloting so as to give everyone an opportunity to be allocated letter of allotment and subsequently issued with lease. He further testified that the successful allottees would then be shown their plots and issued with beacon certificates.
 22. It was DW1's testimony that the properties were transferred to the 2nd Defendant without any subdivision. He added that the Plaintiff's documents had the approval by the chief land registrar for Langa Langa plots. He further testified that the said documents were not obtained using the due process as there was no council resolution or ministerial approval. He testified that the lease for Block 4/224 was for 99 years from 1st August, 1967. He added that the 3rd Plaintiff's lease was for a term of 99 years from 1st January, 1998. He testified that if indeed Block Block 4/417 was a subdivision of Block 4/224, then the lease of 4/417 should have run from 1st August, 1967.
 23. Upon cross examination by Mrs. Mbaabu, DW1 stated that nothing showed that Block 4/411 was a subdivision of 4/224. He added that the allotment letter did not show the plot was part of Block 4/224. He confirmed that Block 4/224 was for 99 years from 1st August, 1967. He further confirmed that the search showed that as at 10th November, 2009, the Municipal council of Nakuru was Block 4/224. DW1 was referred to the sale agreement dated 6th May, 2010 at page 22 of the 1st Defendants' bundle where he confirmed that the same was between the Municipal council and the 2nd Defendant. He added that as per clause 6 of the agreement, the Municipal council was to pay the transfer cost after which it handed over the property after transfer to the 2nd Defendant. He stated that a notice was issued to the tenants and added that the properties in the Plaintiff's claim were not part of the properties. He further stated that the properties listed were not in the name of the municipal council at the time the suit was filed. He added that if the property had been subdivided, there would have been more titles. He stated that the municipal council not aware of the alleged subdivision by the Plaintiffs. He stated that if the properties had been sold to the plaintiffs, they would not have been included in the sale to the 2nd Defendant.
 24. Upon cross examination by Mr. Waiganjo for the Plaintiff, he stated that Municipal council of Nakuru and Nakuru Municipal council were used interchangeably. He further stated that the Municipal council transferred the assets to the 2nd Defendant to redeem its debt liability to the 2nd Defendant. He added that Nakuru Municipal owed the 2nd Defendant pension funds and it could use assets to pay its liability. He stated that the survey maps and minutes were not produced. He confirmed that Block 4/224 was never subdivided. He further stated that the documents at page 9 of the Plaintiffs supplementary bundle showed that it was registered and approved for Block 1. He also stated that from the search, land parcel Block 4/411 was charged to AFC. He added that the transfer of parcel 224 was subject to the 2nd Defendant and that there was no intention of evicting the tenants. He confirmed that from the uncertified RIM and Map it confirmed that parcel 224 was subdivided but added that it did not appear on the RIM. He stated that the RIM (uncertified) related to Block 4 where parcel 224 was located. He further stated that entry 233 showed that parcel 224 was subdivided into parcels 405-436



- on 14th March, 2001. He added that the letter at page 8 of the Plaintiffs supplementary bundle was of the same date. He also stated that the RIM also showed parcel 240 though it was not in the F/R 285. He stated that it was reserved for a nursery school.
25. DW1 was referred to the valuation report annexed to the 1st Defendant's bundle of documents at page 26 and stated that the school was not included and that the report had no mention of the nursery school. He further stated that if the allocation was cancelled, a notice had to be issued. He added that Elizabeth Wangari of plot 240 was not issued with any notice.
 26. He stated that a demand for Kshs. 20,800/= was sent to the 3rd Plaintiff and was paid for. He confirmed that the certificate of lease for parcels 4/223 and 4/417 were issued by the lands office. He further confirmed that the plaintiff land parcels were recorded at the land office and the municipal council records. He stated that the land was not subdivided at the time of sale.
 27. Upon re-examination by Mr. Kinuthia, DW1 stated that payment of rates did not connote ownership. He stated that upon transfer, the transferee had to give notice of new ownership. He stated that there was no explanation of how titles for land parcels 417 and 223 were processed. He added that it was not shown whether the municipal council of Nakuru was involved. He stated that the addendum to agreement at page 61 showed that parcel Block/236 was expunged as it had an ongoing court case. DW1 stated that there was no evidence that the municipal council was involved in any subdivision carried out in 2001. He stated that the allotment showed that resolution was made in 1977 but formal allotment was in 1999. That marked the close of the 1st Defendants case.

4th Defendant's case

28. Collins Liyai Aliela the Land Registrar, Nakuru testified as DW1. His witness statement dated 15th February, 2022 filed by R G Kubai on 14th December, 2022 was adopted as his evidence in chief. He further produced list of documents dated 1st December, 2022 as 4th DEX 1-4th DEX 8. He testified that from the certified copy of the white card Nakuru/Municipality/Block 4 parcel No. 224 was a leasehold with the lesser being government of Kenya. He testified that the lessee was the Municipal Council Nakuru being a lease for 99 years from 1st August, 1962.
29. He testified that with regard to parcel No. 236, the lesser was the Municipal Council of Nakuru with a caution. He testified that the lessee was Eliud Mahos Tallan. He testified that parcels No.234C, 240, 247 and 248 were surveyed and had no encumbrances. He testified that there was no fraud and that they rejected documents presented. Upon cross examination by Mr. Kinuthia, he stated that the parcel of land was at the Central Registry and that there was no evidence subdivision. He added that what came for registration were the new lessees.
30. Upon cross examination by Mrs. Mbaabu, he stated that after subdivision new leases were to be issued. He confirmed that they did not have other records. He further confirmed that if there was subdivision, there would be an entry. He stated the certificate of lease in the 2nd Defendants list of documents were in correspondences with what he had. He stated that Nakuru Municipality Block 4/224 was owned by the Defendants. He also stated that the lease for Block 4/411 was not related to Block 4/244. He confirmed that the seal at page 13 was for 4/411 and not 224. He added that there was no relationship to 224 as the certificate of lease was 4/417. He confirmed that the certificate of lease did not show subdivision. He also confirmed that parcel no 224 was intact and different from 418. He stated that the lesser was the government of Kenya.
31. Upon cross examination by Ogembo for the interested party, DW1 confirmed that he produced the official record. He confirmed that the whole land was conferred. He stated that the Certificate of title



was issued in 2009 and that there was a lease from 1967 to 2009 to the Municipal Council. He stated that the County Council applied for a title. He further stated that the survey was with the department of survey. He stated that he was not clear about the subdivision. He confirmed that the same was to be done by the Land Registrar. He admitted that they needed to check other records to establish subdivision. He stated that the search for parcel number 428 showed that Andama Langat was issued with a title.

32. Upon cross examination by Waiganjo, he confirmed that he never went to the ground. He further confirmed that he had no record that plot 224 was subdivided. He also confirmed that there was a certified copy for 428. He admitted that he had no evidence that the two were not related. He stated that he had not considered the other alleged subdivision. He further stated that 240 was registered in the 3rd Defendant's name. He confirmed that he did not know what the land was reserved for. He also confirmed that the interested party's search was certified. He stated that the F.R showed that 224 was subdivided to create 405 to 436. He added that rates were payable before titles were issued. He stated that in some cases the government reserved the user.
32. Upon re-examination, he stated that the white card sought to prove transition carried out by proprietor. He stated that if a transaction was not entered in the white card, then it showed that it was not registered. He also stated that a leasehold did not show subdivision. He added that the search for 428 was not on 224. He stated that the consent of 224 was for L.R PFT. He stated that the search dated 10th September, 2009 confirmed that the parcel was in the name of Municipal Council of Nakuru. He stated that he was not aware of any subdivisions and that the register for 224 was still intact with the registered owner as the 3rd Defendant.

2nd & 3rd Defendant's case

33. Mitey Issac testified ad DW1 where his statement dated 8th October, 2019 was adopted as his evidence in chief. He testified that he was the head of the 3rd Defendant company. His list of documents dated 8th October, 2019 were marked and produced as 2nd- 3rd DEX 1-7. His further list of documents dated 17th March, 2022 were marked and produced as 2nd – 3rd DEX 8-11. He testified that the Plaintiffs were the 2nd Defendant's tenants. He testified that through an expression of interest in the daily on 21st December, 2018 they demanded redeveloping of the properties situated in the subject suit lands. He testified that the same was to be done in phases. He testified that the 1st phase was to do a feasibility study which report was filed on 9th October, 2019. He further testified that the County Government and Estate Renovations were to be consulted. He testified that the suit properties were Block 4/224, Block 4/237, Block 4/240, Block 4/247, Block 4/248, Block 4/249, Block 4/239, Block 2/104, Block 2/137 and Block 5/249. He testified that he was not aware of Block 4/405-436.
34. Upon cross examination by Adomeyon for the 4th Defendant, DW1 testified that he was not aware of the Plaintiff's ownership. He added that he was also not aware of any fraud. He confirmed that they entered into agreement after due diligence was done. He stated that they were in division stage of the lease for Block 4/224. He added that he was not aware of subdivision. He stated that the other titles were a nullity.
35. Upon cross examination by Ogembo, he confirmed that they had an agreement between the 2nd Defendant and Nakuru Municipal Council. He stated that the debt was by the Municipal council of Nakuru. He added that the properties never belonged to the Municipal Council of Nakuru. He stated that the agreement was made after valuation of the property on 22nd October, 2009. He added that negotiations started earlier than 2009 where the Municipal Council was to pay cash or through a debt swap. He stated that they availed the titles on 10th November, 2009. He admitted that he could not



recall when he completed his due diligence or when the titles were issued. He confirmed that all the tiles were registered on the same day. He confirmed that the allotment of 1967 being registered on 29th June, 2009 was not normal. He admitted that despite having visited the property, he did not do a report. He stated that tenants were on the premises and not owners. He confirmed that the search was done after registration. He stated that the agreement had an addendum. He admitted that he did not know the error in the property. He stated that there were two valuations done by different persons.

36. Upon cross examination by Mr. Waiganjo, DW1 stated that he was the company secretary for 3rd Defendant who was the administrator for the 2nd Defendant. He admitted that he did not have any authority to testify. He further admitted that he never visited the land. He confirmed that the stake holder's engagement was important. He stated that they intended to re-develop since the plots had old buildings put up in 1980's. He confirmed that tenants were paying rent to local authorities. He confirmed that the affordable housing could not be put up without engagement of the tenants. He confirmed that the tenants were not aware of the advert but they were informed. He stated that they attempted an out of court settlement but it did not work. He further stated that the council owed Kshs192,299, 568 and added that it was the administrator for the Local Authorities Pensions Trust Scheme. He also stated that Nakuru municipal Council were supposed to remit pension failure which it was an offence. He stated that due diligence included the map of the area. He stated that he relied on the information by the Land Registrar who disowned the RIM. He stated that the issues in contention were different.
37. Upon re-examination, he stated that there was no evidence that plot 224 had been subdivided. He further stated that they never recorded any communication for the residents. He also stated that the Plaintiffs filed the suit without having consulted. He stated that the tenants were guest until he put up the advertisement on the newspaper. That marked the close of the 2nd and 3rd Defendants case.

Interested Party's case

38. Andrew Chesilut Lagat testified as IP1 where his witness statement and bundle of documents marked as Interested /PEX 1-I/PEX6 were produced as his evidence in chief. He testified that his plot number was block 4/428 where he applied in 1995 and was issued with an allotment letter dated 18th June, 1996. He also testified that he was issued with an allotment letter dated 28th October, 1996. He testified that in 1998 there was subdivision. He added that he had the F.R dated 19th November, 1998 which showed 404 to 436 which were part of 224. He testified that he was given the lease by the town clerk and mayor which lease was registered on 3rd February, 1999. He further testified that he was issued with a certificate of lease dated 3rd February, 1999. He testified that he obtained the RIM from the survey offices. He testified that the same under entry number 3 showed that 224 was subdivided. He added that entry number 33 showed that 224 was the old parcel and went further to 405-436. He testified that entry No 33 showed the F.R 285/84. He testified that he paid rates. He further testified that valuation No.4 2005 showed LR No.224 and new LR No.428. He testified that the land existed.
39. Upon cross examination by Waiganjo, he stated that he had a title to his property issued in February 1999. He stated that plots no. 428, 411, 417 and 423 existed. He stated that the map was their property. He stated that the lease was by the municipal Council of Nakuru. He further stated that the 2nd Defendant got their title in the year 2010. He stated that the lease was registered in 1999.
40. Upon cross examination by Kinuthia, he stated that Block 4/224 was subdivided as evidenced from the RIM. He further stated that Nakuru municipal council transferred land to the 2nd Defendant in 2010. He stated that he came to know of the agreement the previous day from Hassan. He confirmed that the letter dated 16th November, 1995 did not refer to block 4/224 or Block 4/428. He also confirmed that



- the PDP was not approved. He stated that he applied for the plot and was given the allocation letter by the municipal council. He stated that he balloted and was shown the land, F.R and the beacons by the surveyor. He admitted that he did not have the rent and rates receipts. He stated that he signed the lease and that the land was subdivided in 2001. He stated that he got his title in 1995. He stated that his lease runs for 99 years from 1996. He added that the lease parcels were different in 224 and 428,
41. Upon cross examination by Ademeyon, he stated that he had a valid lease as he signed the same at the lands office as called by the town clerk. He stated that the lease was registered on the same day it was signed. He added that the allocation letter meant that he applied and made payment. He admitted that he did not have receipts. He stated that he had built a house as authorized by the county.
 42. Upon cross examination by Mbaabu, he stated that he was a member of staff at the council during allocation. He stated that he was in possession of the property and that the members of the Association were the ones staying in the houses. He was referred to the amended plaint where he stated that his property was number 23 which the plaint showed as “vacant” on 2nd February, 2020. He stated that he did not give them the authority to include his property. He stated that the agreement between the 2nd Defendant and Municipal council did not refer to the plot number 428. He admitted that he did not have the letter of acceptance receipts of payment. He admitted that there was no document with Block 4/224. He further admitted that the plot number was Ngei 11B/4/7. He stated that after survey, new numbers were created. He admitted that he did not know the number. He added that the PDP did not have the documents to Nakuru M/Block 4/224. He stated that he signed the lease before the Land Registrar. He admitted that he had not submitted any building plans. He confirmed that he had not seen the notice and that it did not affect him.. He also confirmed that he did not do a search on 224.
 43. Upon re-examination, he stated that on 16th November, 1995, he made the application for plot and was allocated Ngei 11KB-4/7. He stated that the land had not been surveyed. He stated that he was given plot number 428 in 1999. He further stated that the leases were prepared by the council and that he paid. He could not confirm where he signed the lease.

Interested Party Witness 2

44. Wilson Kibelekenya testified as IP2. He testified that he was the Principal Geospatial Data Management Officer. He produced documents dated 8th May, 2024 as I/P EX 7-I/P EX12. He testified that the survey plan and RIM were generated from a processor and that there was a computation file. He testified that the documents showed how they came up with a survey plan and the RIM. He testified that the survey plan was generated to show the location of a parcel of land in terms of the coordinates. He further testified that the RIM map showed the general location of a parcel of land usually forwarded to the department of lands for preparation of lease.
45. He testified that the RIM was for Block 4 with the last entry as No.70. He further testified that entry No.33 amended parcel no 405- 436. It was his testimony that the entry was created on 14th March, 2001 which corresponded with the entry on the RIM. He further testified that amalgamation began when the surveyor put the parcels together with computation and a new survey plan. He testified that the survey should be submitted to the Director of Survey for processing and approval. This would then be issued with a new parcel number. He testified that it would then be amended in the RIM. He further testified that there was no entry signifying amalgamation in the F.R and R.I.M. He testified that the subdivision was originated by the Municipal Council of Nakuru and was approved. He further testified that the survey map shown on 18th March, 2022 could not be verified to be their document. He testified that the survey process defined the location of property and its coordinates.



46. Upon cross examination by Waiganjo, he stated that I/PEX 7 was FR No.284/84 and it related to Nakuru/Municipality Block 4/224. He confirmed that he could see parcels No. 411, 417 and 423 which were subdivisions of Nakuru/Municipality Block 4/224. He confirmed that the RIM had parcel number 224 as original and the new parcel numbers. He stated that the amendment was in entry No. 3 and added that the RIM was readily available.
47. Upon cross examination by Mbaabu, he stated that he worked for survey of Kenya as the head of surveys records office. He stated that his duty was maintenance of survey records, acting on queries raised by authorities, updating of survey records, issuance of new numbers of newly submitted surveys and provision of certified copies of records as requested by members of public. He stated that he was not a surveyor. He explained that the difference between a surveyor and geospatial data manager was that a surveyor goes to the ground to do a survey and a geospatial Data manager manages the records. He stated that his role was issuance of new numbers for new maps and new parcels numbers. He confirmed that he did not participate in the division. He was referred to I/PEX 2 where he confirmed that he did not have the application. He further confirmed that land could not be subdivided under a subdivision scheme. He stated that the subdivision scheme was 1/PEX9 and that it did not show who prepared it as it was a sketch. He confirmed that he could only see Block 4/224. He also confirmed that there could not be survey with surrender of title. He stated that the F.R map records parts of 224. He added that RIM No.119/3 was not before the court. He confirmed that F.R 285/84 was not sealed. He also confirmed that the RIM was not usually authenticated. He stated that the F.R records 404-436 and that the RIM which read 405-436 was an anomaly. He stated that subdivision begins with approvals and after survey work is done, there is completion of field work. He stated that the Director of survey processes the survey and is approved after which the RIM is amended then forwarded to the Director of Land adjudication for approval. He confirmed that the letter of approval did not refer to block 4/224. He added that one could not get a certificate of lease before the RIM. He stated that the RIM was amended in March 2001. He stated that he was not certain why the title was issued on 3rd February, 1999. He stated that the serial on the certificate of lease was 0.0469. He added that the serial on the F.R was different. He stated that the plots were indicated as unsurveyed plot yet the title was issued in 1980. He stated that as at, 1980 the land had been surveyed and that it was not possible to allocate a surveyed plot. He confirmed that the certificate of lease and maps from the 1st Defendant were not from survey of Kenya. He stated that he was not authorized to testify and added that he did not need a letter. He stated that his testimony was to produce the records at Survey of Kenya at Block 4/428. He further stated that the F.R referred to Block 4 Nakuru municipality while the RIM referred to Block 4. He added that the parcels in the F.R were the same parcels in the RIM.
48. Upon re-examination, he stated that the evidence of approval was authentic. He stated that the letter at page 205 did not show block 224 because amendment was for 405- 436. He added that after 2001, Block 224 did not exist. He stated that it was from the surveyor that title was granted. He stated that a title that did not correspond to the RIM did not exist.
49. Upon re-examination by Langat, he stated that the RIM's were general and do not carry out measurements and sizes. He stated that as soon as the survey plan was produced, a certificate of lease could be issued. He stated that he did not have a RIM for 224. That marked the close of the interested party's case.

Submissions

50. The Plaintiff's counsel filed his submissions dated 4th July, 2024. He identified three issues for determination. First issue was whether the suit property Nakuru Municipality Block 4/224 was subdivided into smaller portions and who are the owners of the various subdivisions. Counsel



submitted that the same was subdivided into smaller parcels that is Nakuru Municipality Block 4/405 to 436 (Ngei Phase I) He submitted that PW1's testimony was corroborated by the interested party's witness. Counsel submitted that the RIM was amended to reflect parcel numbers Nakuru Block IV 405 to 436 respectively. It was counsel's submission that the Defendants did not challenge the authenticity of the letter dated 14th March, 2001 from the Director of surveys. He submitted that Block 4/224 was properly subdivided and that the title held by the 2nd and 3rd Defendants was fraudulently obtained through the 1st Defendant's acts.

51. It was counsel's submission that there was evidence that the sub-divisions were allocated to various 3rd parties including the 2nd and 3rd interested parties. He relied on Section 26 of the Land Registration Act and submitted that none of the names from the Defendants pleadings claimed to be beneficial owners of the various portions. He also relied on the case of Richard Kimani V Swaleh Mohamed Mwakuriwa & 5 Others [2022] eKLR. He submitted that the authenticity of the demand notices were not contested by the 1st Defendant. Counsel submitted that the parties as outlined in paragraph 8 of the amended plaint are the rightful and legal owners of the suit property.
52. The second issue was whether the 4th Plaintiff is the rightful and legal owner of the parcel of land known as Nakuru Municipality Block 4/240. Counsel submitted in the affirmative and argued that the moment the 1st Defendant allocated the same to the 4th Plaintiff, the parcel of land was not available for any further dealings. He further argued that there was no evidence that the 1st Defendant issued any notice to repossess the parcel of land. He relied on the case of Kimuyu V City Council of Nairobi [2023] KEELC 16288 (KLR) and submitted that the 4th Plaintiff produced a chain of documents that showed how she acquired the property. He further relied on the Court of Appeal case of Munyu Maina V Hiram Gathiga Maina [2013] eKLR and submitted the title Block 4/240 in possession of the 2nd and 3rd Defendants was defeasible and that they don't hold a valid title.
53. The third issue was whether the tenants of the parcels of land Block 4/224 and its subsequent subdivisions were entitled to notice and the consequence of the commitment to purchase. Counsel submitted that it was not in dispute that members of the 1st Plaintiff were tenants of the various houses and have paid rent to the 2nd Defendant. He submitted that the advertisement by the 2nd and 3rd Defendants showed that there was intention to evict the tenants but that there was no notice issued to them. He relied on Section 152B and E of the Land Act and submitted that the tenants were entitled to an adequate notice as the duration of the advertisement which sought for developers was to affect the tenants. He relied on the Supreme Court case of Communications Commission of Kenya & 5 Others V Royal Media Services Limited & 5 Others [2014] eKLR and submitted that the 1st and 2nd Plaintiffs being tenants were entitled to proper notice of the change of heart by the 1st Defendant.
54. Counsel submitted that the 1st Defendant having created a legitimate expectation, it was only fair for the tenants to seek an order of specific performance against the Defendants. He cited the case of George Njenga Kagai V Samuel Kabi Njoroge & Another [2019] eKLR. In conclusion, counsel urged the court to allow the present suit.
55. Counsel for the 1st Defendant filed his submissions dated 18th July, 2024 where he identified one main issue for determination as whether the defunct Municipal Council of Nakuru transferred the suit land Block 4/224 to the 2nd Defendant intact and devoid of any subdivision and whether it passed to the 2nd Defendant intact. While submitting in the affirmative, counsel for the 1st Defendant submitted that the documents held by the 2nd and 3rd Plaintiffs were acquired fraudulently as they were not supported by any formal engagement between the Municipal Council. He cited Article 40 of the constitution and Section 26 of the Land Registration Act and submitted that land ownership can be interfered with where it was demonstrated that the same was acquired unlawfully. Counsel relied on a number



of authorities including the Court of Appeal case of Henry Muthee Kathurima V Commissioner of Lands & Another [2015] eKLR and submitted that the transaction relating to public land must be buttressed by an elaborate lawful process.

56. He further submitted that no allocation and/or subdivision took place since the same was not preceded by a full council meeting resolution and application by the defunct local authority for the requisite consents and approval. Counsel submitted that although the 1st Plaintiff claimed to have been issued with an allocation letter, there was no corresponding evidence that the defunct local authority was involved in the alleged transaction. He cited the case in Franco Nderitu Kanyari & 6 Others V County Government of Nyandarua [2018] eKLR and submitted that payment of rates was not proof of ownership. He further submitted that the alleged allocation and subdivision of the suit land was illegal, unlawful and unprocedural therefore null and void.
57. He submitted that the lease alleged to be used to register the 2nd and 3rd Plaintiff's/interested party's certificate was procured unprocedurally by invoking an approval meant for another area, Langalanga area (Nakuru Municipality Block 1) to be precise. Counsel further submitted that Block 4/240 was never allocated to the 4th Plaintiff as there was no formal engagement between herself and the defunct local authority. He added that there was no correlation between her two alleged letters of allotment. He went on to submit that the Plaintiffs and Interested parties did not fortify their claim with any supporting documents. Counsel cited the Court of Appeal case in Five Forty Aviation Limited V Erwan Lanoe [2019] eKLR which cited with approval the case of Kenya Airways Limited V Satwant Sigh Flora [2013] eKLR. He submitted that the tenants' fears were premature since the advert of 21st December, 2018 was clear that there would be a stakeholder's engagement prior to the commencement of the intended redevelopment.
58. In conclusion, counsel submitted that the Plaintiffs' claim is speculative and an afterthought and the same ought to be dismissed.

Analysis and Determination

60. This court has considered the pleadings and the evidence on record and is of the view that the following issues need to be determined:
- a. Whether Nakuru Municipality Block 4/224 was lawfully sub-divided.
 - b. Who is the legal owner of the suit property?
 - c. Whether the Plaintiffs are entitled to the orders sought

Whether Nakuru Municipality Block 4/224 Was Lawfully Sub-divided.

61. This court has considered that letter dated 14th March, 2001 and the certified copy of the sub division scheme dated 6th September, 1996 and it is not in dispute that the 1st and 2nd Defendants did not challenge the said documents in their testimonies. The said documents were however not sufficient proof that Nakuru Municipality Block 4/224 was in fact subdivided into smaller parcels that is Nakuru Municipality Block 4/405 to 436 (Ngei Phase I). It was the 1st Defendant's case that the Plaintiffs did not obtain the necessary consents and approvals from the defunct local authority, the 4th Defendant (DW1) Land Registrar during cross examination confirmed that the F.R showed that 224 was subdivided to create 405 to 436. In addition, the 1st Defendant (DW1) admitted that the uncertified RIM and Map confirmed that parcel 224 was subdivided. The Defence witnesses contradicted themselves on the issue of subdivision but it is this court's view that there was no lawful sub division of Block 4/224. Moreover, the Land Registrar Nakuru testified that the record at the lands



office showed that the land was still registered as Nakuru Municipality/ Block 4/224. This means that the title for the said property was never surrendered to the Land Registry Nakuru for cancellation. It was not possible for new titles to be issued without cancellation of the title for Nakuru Municipality/ Block 4/224. There was no evidence that FR 285/84 was ever registered at the Nakuru land registry.

62. This court finds that the suit property was public land with houses built by the defunct Nakuru Municipal Council using public funds and therefore could not be dealt with as if the same was private property. I agree with the 1st defendant that decision making in the defunct local Authorities was by way of full council resolution. Transactions by the said organs were to be by way of resolutions depicted in minutes confirming adoption of the decision by the council. There is no evidence that the council sat and agreed through a resolution to subdivide the land and allocate to the plaintiffs. The subdivision was a transaction between the town clerk and the Director of surveys without the authority of the defunct Nakuru Municipal Council and the Minister for Local government.
63. Section 144(3) of the repealed Local Government Act Cap 265 provided for the Minister's approval in any transaction involving the Local Authorities land. The plaintiff and the interested party did not demonstrate that the approval was obtained. Section 144(6) provided that before any sell of the land owned by the local authority, the consent of the Minister was to be obtained.

. 144.

- (1) A local authority may, for the purpose of any of its functions under this or any other written law, by agreement acquire, whether by way of purchase, lease, exchange or gift, any land, whether situate within or without the area of the local authority, notwithstanding that the land is not immediately required for that purpose; and where land is so acquired notwithstanding that it is not immediately required for the purpose for which it was acquired, it may, until so required, be held and used for the purpose of any other functions of the local authority.
- (2) A local authority may, subject to the approval of the Minister, apply to the Government or any other authority having power to acquire land for any land required for the purpose of any of its functions to be acquired compulsorily for and on behalf and at the expense of the local authority; and any such purpose shall be deemed to be a public purpose within the meaning of the Land Acquisition Act, or any enactment replacing the same.
- (3) Any land belonging to a local authority and not required for the purpose for which it was acquired may, with the approval of the Minister and subject to such conditions as he may think fit to impose, be appropriated for any other purpose for which the local authority is authorized to acquire land: Provided that the appropriation of land by a local authority shall be subject to any covenant or restriction affecting the used of the land in its hands.
- (4) On an appropriation of land under subsection (3) of this section such adjustments shall be made in the accounts of the local authority as the Minister may direct.
- (5) A local authority may let, or grant to any person a licence to occupy, any land which it may possess— (a) with the consent of the Minister for any term; (b) without the consent of the Minister, unless such consent is required by section 177 or by any other written law, for a term not exceeding seven years, and may, in respect thereof, charge rents, stand premium or fees.
- (6) Subject, in the case of land acquired in pursuance of subsection (2), to the provisions of the Land Acquisition Act, or to any written law replacing that Act, a local authority may, with the consent of the Minister— (a) sell any land which it may possess and which is not required for the purpose for which it was acquired or being used; (b) exchange any land which it may possess for other land, either with or without paying or receiving any money for equality of exchange.



63. This court finds further that the transfer of the property was contrary to the provisions of the above law that required the consent of the minister before any land belonging to the local authority could be sold. In a nutshell, the acquisition of the suit properties by the plaintiffs is shrouded procedural irregularities and improprieties as the same was public with buildings and therefore the court cannot protect their titles. The 1st plaintiffs' members are tenants of the 2nd defendants and therefore the 2nd defendant should treat them as such.
64. Going to the second issue, it is this court's view that the 2nd Plaintiff produced before this court lease for Block 4/411, 4th Plaintiff's allotment letter dated 8th February, 1999 for Block 4/240 and the 3rd Plaintiff's Certificate of lease for Block 4/423 as proof of ownership. Subsequently, the 1st and 2nd Defendants also produced a Certificate of lease for the suit properties issued on 29th June, 2009 as proof of ownership.

Section 24(a) of the *Land Registration Act* provides that:

“Subject to this Act, 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.”

Section 26(1) of the *Land Registration Act* further provides that:

“...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
- b. Where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.”

65. The Supreme Court in the case of *Dina Management Limited v County Government of Mombasa & 5 others* (Petition 8 (E010) of 2021) [2023] KESC 30 (KLR) (21 April 2023) cited the case of *Munyru Maina V Hiram Gathiha Maina* [2013] KECA, where the court held as follows:

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

66. It was the Defendant's case that the defunct local authority transferred Block 4/224 to the 2nd Defendant devoid of any subdivision. It is not in dispute that this court has already established that subdivision that is alleged to have occurred in 2001 was irregular and un-procedural.
67. The irony of the subdivision is that the Registry index Map was amended on the 14 March 2001 as per the entry no 33 which led to the creation of parcels number 405 to 436 but the titles for some



of the resultant parcels were opened 8 months before the amendment of the Registry Index Map and registration done on the same date. For example, Andrew Lagat was registered as proprietor and issued title on 3rd February, 1999 whereas Francis Wanjohi Hassan was registered as proprietor and issued with title on 5th May 2000. The amendment of the Registry index Map was a reverse science meant to validate illegalities.

68. It is therefore quite clear Block 4/224 was available to the plaintiff for sale by the Municipal council to the 2nd Defendant in 2009 as a whole. The upshot of the above is that the suit is dismissed with no order as to costs as the defendants the improprieties herein were occasioned by the defunct Municipal Council of Nakuru. The interested party's claim is also dismissed with no orders as to costs. It is so ordered.

JUDGMENT DATED, SIGNED AND DELIVERED ELECTRONICALLY THIS 20TH DAY OF SEPTEMBER 2024.

A.O.OMBWAYO

JUDGE

