



Rajkosmag Company Limited v Kenya Railways Corporation & 3 others (Environment & Land Case 259 of 2022) [2024] KEELC 13215 (KLR) (14 November 2024) (Judgment)

Neutral citation: [2024] KEELC 13215 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 259 OF 2022
JO MBOYA, J
NOVEMBER 14, 2024**

BETWEEN

RAJKOSMAG COMPANY LIMITED PLAINTIFF

AND

KENYA RAILWAYS CORPORATION 1ST DEFENDANT

**KENYA RAILWAYS CORPORATION STAFF RETIREMENT BENEFIT
SCHEME 2ND DEFENDANT**

CHIEF LAND REGISTRAR, NAIROBI 3RD DEFENDANT

ATTORNEY GENERAL 4TH DEFENDANT

JUDGMENT

Introduction And Background

1. The Plaintiff herein filed the instant suit vide Plaintiff dated the 28th July 2022 and in respect of which the Plaintiff sought for the various reliefs. Subsequently, the Plaintiff was amended and thereafter further amended resting with the further amended Plaintiff dated the 24th January 2023 and in respect of which the Plaintiff has sought for the following reliefs [verbatim]:
 - i. A declaration that the sale of Land Reference Number 209/6507, being title Number I.R. 20532 to the Plaintiff was complete and all due process was followed;
 - ii. A declaration that that Land Reference Number 209/6507, being title Number I.R. 20532 was not available for vesting to the 2nd Defendant;
 - iii. An order does issue cancelling legal notice 169 vesting Land Reference Number 209/6507, being title Number I.R. 20532 to the 2nd Defendant;



- iv. Nullification of all documents acquired or purported to be acquired by the 2nd Defendant from the 1st Defendant;
 - v. An order to issue directing the 3rd Defendant to register the transfer in favor of the Plaintiff as presented vide an Application for Registration form given daybook Nos.420 dated 6th August 2009 and 1053 dated 11th March 2010 and release the transfer and the original Title No. IR 20532 to the Plaintiff duly registered in its favor.
 - vi. An order does issue directing the 2nd Defendant to give vacant possession to the Plaintiff.
 - vii. The Costs of this Suit, and,
 - viii. Any other relief that this Honourable Court may deem fit and just to grant in the circumstances.
2. Upon being served with the Plaint and the summons to enter appearance, the 1st Defendant duly entered appearance and thereafter filed a statement of defence dated the 6th December 2022. Instructively, the 1st Defendant denied the averments contained at the foot of the Plaint.
 3. Even though the Plaint was subsequently amended and thereafter re-amended, the 1st Defendant did not file any amended statement of defence. For good measure, the 1st Defendant has adopted and relied on the contents of the original statement of defence.
 4. The 2nd Defendant also entered appearance and filed a statement of defence dated the 6th December 2022. Similarly, the 2nd Defendant has denied the averments contained at the foot of the Plaint.
 5. The 3rd and 4th Defendants also entered appearance and filed a statement of defence dated the 2nd June 2023. Suffice it to point out that the 3rd and 4th Defendants also denied the averments by and on behalf of the Plaintiff. In any event, the 3rd and 4th Defendants have contended that the memorandum of transfer and the transfer instrument that were [sic] presented by the Plaintiff could not be registered because there was an order of the court which had been endorsed and registered on the suit property.
 6. On the other hand, the 5th Defendant entered appearance and filed a statement of defence dated the 1st march 2023. The 5th Defendant has also denied and disputed the claims on behalf of the Plaintiff.
 7. On the contrary, the 5th Defendant has contended that the suit property which is being claimed by the Plaintiff herein was the subject of an advertisement for sale vide tender. Furthermore, the 5th Defendant has stated that same tendered for the purchase of the suit property and thereafter same [5th Defendant] emerged as the highest bidder.
 8. The subject matter came up for case conference on various dates resting with the 19th September 2023 when the advocates for the respective parties confirmed that the matter was ready for hearing. In this regard, the advocates for the parties sought to be granted a date for hearing.

Evidence By The Parties' :

Plaintiff's Case:

9. The Plaintiff's case is anchored on the evidence of two [2] witnesses, namely, Dr. Edwin Rono and Rajab Kipkoskei Magut, respectively. Same testified as PW1 and PW2.
10. It was the testimony of the witness [PW1] that same is a medical practitioner. Furthermore, the witness testified that currently same [witness] practices medicine at St. Lukes Orthopaedic Hospital and Moi Teaching & Referral Hospital in Eldoret.



11. On the other hand, it was the testimony of the witness that same [witness] is familiar with one Rajab Kipkoskei Magut. In this regard, the witness averred that the said Rajab Kipkoskei Magut was a patient at St. Lukes Hospital in Eldoret. In addition, the witness testified that Mr. Rajab Kipkoskei Magut had been involved in a road accident and thereafter same [Kipkoskei Rajab Magut] was treated at St. Luke Orthopaedic Hospital.
12. It was the testimony of the witness that by virtue of his employment at St. Lukes Orthopaedic Hospital, same [witness] attended to the patient [Rajab Kipkoskei Magut]. In this regard, the witness sought to tender and produce a copy of the medical report. For good measure, the report was tendered and produced as exhibit P1.
13. On cross examination, by learned counsel for the 1st and 2nd Defendant the witness stated that even though same has contended that he [PW1] is a medical doctor, same [witness] admitted not have tendered any evidence to underpin the fact that same is truly qualified to practice as a medical doctor. Furthermore, the witness averred that even though Mr. Rajab Kipkoskei Magut were admitted and treated at St. Lukes Hospital, he [witness] has not tendered or produced a copy of the treatment summary/records demonstrating that the said Mr. Rajab Magut was indeed admitted at the hospital.
14. Furthermore, the witness averred that same also did not treat Mr. Rajab Kipkosekei Magut.
15. On cross examination by learned counsel for the 5th Defendant, the witness averred that same is indeed a medical doctor. Furthermore, the witness has averred that same graduated in the year 2016.
16. Whilst under further cross examination, the witness averred that same is however not an orthopaedic surgeon.
17. On re-examination by Learned Counsel for the Plaintiff, the witness testified that same [witness] has been attending to Mr. Rajab Kipkoskei Magut. At any rate, it was the testimony of the witness that though Mr. Rajab Magut underwent surgery arising from the road traffic accident, he [witness] is not the one who undertook the surgery.
18. The second witness who testified on behalf of the Plaintiff was Mr. Rajab Kipkoskei Magut. Same testified as PW2.
19. It was the testimony of the witness that same is a director of the Plaintiff company. In fact, the witness contended that by virtue of being a director of the Plaintiff company same is therefore conversant with the facts of this matter. In addition, the witness averred that same has since recorded two [2] sets of witness statement over and in respect of the instant matter. The witness contended that the first witness statement is dated the 28th July 2022 and which witness statement the witness sought to adopt and rely on as his evidence in chief.
20. Suffice it to point out that the witness statement under reference, namely, the Witness statement dated the 28th of July 2022; was thereafter adopted and constituted as the evidence in chief of the witness.
21. On the other hand, the witness also referenced another witness statement dated the 9th October 2023 and which witness statement the witness sought to adopt and rely on as further evidence in chief. Instructively, the witness statement dated the 9th October 2023 was thereafter adopted and constituted as the further evidence of the witness.
22. Additionally, the witness stated that same has since filed a list and bundle of documents dated the 28th July 2022. The witness posited that the list dated the 28th July 2023 has a total of 19 documents which documents the witness [PW2] sought to adopt and rely on. Suffice it to point out that the documents under reference were thereafter adopted and constituted as Plaintiff's exhibits P1 to P19, respectively.



23. On the other hand, the witness also adverted to a further list and bundle of documents dated the 6th March 2022. Furthermore, the witness also sought to tender and adduce the said document at foot of the list of documents as Exhibits on behalf of the Plaintiff.
24. Suffice it to underscore that the documents at the foot of the list dated the 6th March 2023 were thereafter adopted and constituted as Plaintiff's exhibits P20 to P29, respectively.
25. It was the further testimony of the witness that same has also filed a third list and bundle of documents. In this regard, the witness highlighted the list and Bundle of Documents dated the 12th June 2023. Thereafter the witness sought to tender and produce the various documents thereunder as further exhibits on behalf of the Plaintiff. For good measure, the said documents were produced as exhibits P30 to p35.
26. Other than the list and bundle of documents, the witness testified that the Plaintiff herein has filed a further amended Plaint dated the 24th January 2023. Besides, the witness also averred that the further amended plaint has been accompanied by a verifying affidavit. In this regard, the witness sought to adopt and rely on the contents of the further amended Plaint.
27. It was the further testimony of the witness that the various witness statement that has been tendered and produced before the court, reflect the correct factual position of the matter. In this respect, the witness implored the court to grant the various reliefs contained at the foot of the further amended Plaint.
28. On cross examination by learned counsel for the 1st and 2nd Defendants, the witness averred that same is a director of the Plaintiff company. Furthermore, the witness stated that the Plaintiff company had two [2] directors. However, the Plaintiff added that one director namely who was the father of the witness died and thereafter the Plaintiff company had only one director.
29. Whilst still under cross examination, the witness averred that the Plaintiff company generated a resolution to mandate and or authorize the filing of the instant suit. In any event, the witness stated that the resolution under reference was handed over to the companies advocate. Nevertheless, the witness averred that even though the resolution was handed over to the company's advocate, the resolution is not one of the documents which has been filed before the court.
30. It was the further testimony of the witness that the Plaintiff company expressed her interest and desire to purchase the suit property after the suit property was advertised in a newspaper. Furthermore, the Plaintiff averred that after reading the newspaper, the Plaintiff applied to purchase the suit property. Nevertheless, the witness added that same has not produced a copy of the newspaper advertisement before the court.
31. On further cross examination, the witness stated that same can also not recall the date of the newspaper advertisement. At any rate, the witness conceded that same is aware that the 1st and 2nd Defendants have denied the existence of any newspapers advertisement.
32. It was the further testimony of the witness that same has indicated in his witness statement that the Plaintiff emerged as the highest bidder after the public auction. Nevertheless, the witness has conceded that same has not tendered and/or produced any evidence pertaining to public auction and bidding.
33. Whilst under further cross examination, the witness averred that there was no public auction. Instead, the witness contended that the sale of the suit property was on the basis of private treaty.
34. It was the further testimony of the witness that the Plaintiff herein was issued with a letter of offer. Thereafter, the witness stated that the Plaintiff responded to the offer and intimated that same



- [Plaintiff] was desirous to purchase the suit property. Nevertheless, the witness stated that the Plaintiff herein wrote an acceptance letter dated the 29th October 2002.
35. It was the further testimony of the witness that even though same has spoken about a public auction and bidding, same [witness] has not tendered or produced before the court any such evidence.
 36. On the other hand, it was the evidence of the witness that the document at page 104 of the 5th Defendant's bundle of document is an invitation to tender. Furthermore, the witness also stated that the document at page 140 of the 5th Defendant's bundle of documents is a letter of acceptance by the 5th Defendant.
 37. Other than the foregoing, it was the testimony of the witness that the Plaintiff herein does not have similar documents. For good measure, it was the testimony of the Witness that same has not tendered before the court any evidence of invitation to tender.
 38. It was the further evidence of the witness that there was no bidding as pertains to the suit property. Nevertheless, and whilst under further cross examination, the witness stated that same was aware that there was an invitation to tender and wherein the 5th Defendant participated. Furthermore, the witness averred that same has seen documents demonstrating that the 5th Defendant emerged as the highest bidder.
 39. On further cross examination, the witness confirmed that thereafter the 5th Defendant generated a letter of acceptance.
 40. Other than the foregoing, the witness averred that in his witness statement same [witness] has stated that there was an approval by the cabinet sanctioning the sale of the suit property. However, the witness admitted that same has not tendered before the court any evidence of the approval by the minister and consent of the board of Kenya Railways.
 41. Nevertheless, it was the testimony of the witness that the minister indeed issued the requisite approval. In respect of the approval, the witness adverted to a letter dated the 5th November 2002. However, whilst under further cross examination the witness conceded that the letter dated the 5th November 2002 did not constitute an approval from the minister or from the board of directors of the Plaintiff.
 42. Additionally, it was the testimony of the witness that there was an advertisement relating to the sale of the suit property. However, the witness averred that the advertisement was carried out in 2019 and not otherwise. For good measure, the witness stated that there was no bidding at the time when the Plaintiff herein sought to purchase the suit property.
 43. It was the further testimony of the witness that the 1st Defendant proceeded to and generated a letter of offer. The witness averred that the letter of offer contained various terms and conditions. In particular, the witness stated that one of the terms contained at the foot of the letter of offer related to payment/ deposit of the stakeholder's sum. Nevertheless, the witness stated that deposit/stakeholder sum was never paid within the stipulated timeline.
 44. Be that as it may, the witness averred that deposit in question was thereafter paid. In any event, the witness posited that the payments, in respect of the deposit was made out of time.
 45. Whilst still under cross examination, the witness stated that the deposit that was paid by and on behalf of the Plaintiff amounted to Kes.300, 000/= only. At any rate, it was contended that same has not produced a copy of the banker's cheque before the court.
 46. On further cross examination, the witness stated that same is not aware of any allegation that the deposit of Kes.3, 000, 000/= alluded to was paid by a third party in respect of a different property.



- In any event, upon being shown the document at page 20 of the 1st and 2nd Defendant's bundle of documents, the witness stated that the said document is a copy of the banker's cheque. Further, the witness admitted that the banker's cheque bears the same number as the banker's cheque referenced by himself.
47. It was the further testimony of the witness that two bankers' cheques cannot bear the same number. Whilst still under further cross examination, the witness stated that the Plaintiff herein was indeed issued with an acknowledgment receipt. In this regard, the witness adverted to a copy of the receipt issued by the 1st Defendant.
 48. On the other hand, the witness stated that the letter of offer which was issued in favour of the Plaintiff alluded to a timeline. In particular, the witness stated that the timeline was 60 days. Nevertheless, it was the testimony of the witness that the Plaintiff herein did not conclude the payments within the stipulated duration.
 49. On further cross examination, the witness averred that the Plaintiff herein did not comply with the terms of the letter of offer. Besides, the witness stated that subsequently, a sale agreement was prepared and same [sale agreement] was dated the 7th February 2003.
 50. It was the further testimony of the witness that the sale agreement also adverted to a completion timeline. Instructively, the witness averred that the sale agreement stipulated 60 days as the completion duration. However, it was the testimony of the witness that same did not pay the balance of purchase price with 60 days.
 51. Be that as it may, the witness stated that the terms of the contract were never extended or otherwise. In any event, the witness clarified that the Plaintiff and the 1st Defendant only had one sale agreement.
 52. It was the further testimony of the witness that the total purchase price was Kes.16, 500, 000/= only. In this regard, the witness posited that the Plaintiff paid a deposit of Kes.3, 000, 000/= only. Furthermore, the witness conceded that there was a balance of the purchase price amounting to Kes.13, 500, 000/= only.
 53. Other than the foregoing, the witness testified that in the year 2010 the Plaintiff received a request from the 1st Defendant to pay/clear the outstanding rate[s] over the suit property. Thereafter, the witness averred that the plaintiff proceeded to and cleared the rates, albeit at the request of the First Defendant herein.
 54. It was the further testimony of the witness that upon payment of the outstanding rates, the Plaintiff was issued with a clearance certificate. Nevertheless and whilst under cross examination, the witness averred that even though the Plaintiff has cleared the debt on behalf of the First Defendant, same [witness] does not have a copy of the acknowledgment receipt which was issued to the Plaintiff.
 55. It was the further testimony of the witness that the outstanding rates were cleared by the Plaintiff. However, the witness stated that the rates were cleared after seven years. In any event, the total payments that were made on account of the rates was Kes.14, 487, 100/= Only.
 56. It was the further testimony of the witness that upon the payments of the balance of the purchase price, the 1st Defendant herein generated and released the completion documents. In particular, the witness averred that the completion documents were released to the Plaintiff in the year 2009.
 57. Whilst still under cross examination, the witness averred that the transfer of the suit property to and in favour of the Plaintiff was subject to issuance of a consent by the commissioner of lands. However, the witness stated that the consent from the commissioner of lands is not one of the documents that were tendered and produced before the court.



58. On the other hand, the witness testified that the Plaintiff presented the completion documents to the Chief Land Registrar for purposes of registration. In particular, the witness averred that the transfer instrument was presented to the chief land registrar in the year 2009. Furthermore, the witness averred that the Plaintiff also paid the stamp duty to facilitate the transfer and registration of the suit property in the name of the Plaintiff.
59. Upon being referred to the documents at page 88 of the Plaintiff's bundle of documents, the witness pointed out that the said document is a vesting order. Further, the witness has alluded that the vesting order was vesting the suit property to the 2nd Defendant. At any rate, the witness averred that the vesting order is dated the 7th September 2006.
60. On further cross examination, the witness averred that the vesting order was duly registered at the land registry. In this regard, the witness acknowledged that pursuant to the vesting order, the suit property was deemed to belong to the 2nd Defendant.
61. On further cross examination, the witness averred that the Plaintiff herein did not raise any objection as pertains to the vesting order or the issuance of the provisional certificate of Title in favour of the Second Defendant herein.
62. On further cross examination, the witness averred that the Plaintiff herein has never taken possession of the suit property. On the contrary, the witness averred that the 5th Defendant has been on the suit property.
63. On cross examination by learned counsel for the 5th Defendant, the witness averred that the Plaintiff company was registered in the year 2002. Furthermore, the witness added that the company has been and is still in active operation to date.
64. It was further testimony of the witness that the Plaintiff company acquired the property from the 1st Defendant. However, the witness averred that despite purchasing the suit property from the 1st Defendant, the Plaintiff has never taken possession of the suit property.
65. Other than the foregoing, the witness averred that same is aware that the 5th Defendant has been in occupation of the suit property. For good measure, the witness added that same [Witness] discovered that the suit property is under the occupation of the 5th Defendant from the year 2018.
66. Whilst still under cross examination, the witness averred that the said sale agreement was executed by a single director on behalf of the 1st Defendant. Similarly, the witness also averred that the sale agreement was also signed by a single director on behalf of the Plaintiff company. Nevertheless, the witness averred that the sale agreement is lawful.
67. On further cross examination, it was the testimony of the witness that same did not see any advertisement that was made in the newspaper pertaining to the sale of the suit property. In any event, the witness averred that same also did not challenge the gazette notice relating to the vesting order. For good measure, the witness added that the vesting order has not been challenged to date.
68. It was the further testimony of the witness that the Plaintiff made payments pertaining to the purchase price. However, the witness added that part of the purchase price related to the payment of outstanding rates.
69. Other than the foregoing, it was the evidence of the witness that same has since seen tender document which were issued in favour of the 5th Defendant. Furthermore, the witness has also averred that the witness has since seen the letter of acceptance generated by the 5th Defendant. In addition, the witness



also averred that same has also seen a sale agreement entered into between the 2nd Defendant and the 5th Defendant.

70. On further cross examination, the witness averred that the 5th Defendant is currently the registered proprietor of the suit property. In any event, the witness stated that same [witness] discovered that the suit property has since been transferred in favour of the 5th Defendant
71. On re-examination, the witness averred that same [witness] has the mandate to represent the Plaintiff company. Furthermore, the witness averred that the Plaintiff company generated a resolution to authorize/sanction the filing of the instant suit.
72. On further re-examination, the witness averred that same was informed of the bidding pertaining to the sale of the suit property. In this regard, the witness added that the Plaintiff company thereafter proceeded to and bid for the suit property.
73. It was the further testimony of the witness that the Plaintiff saw the advertisement in the newspaper. Thereafter the witness averred that the Plaintiff developed an interest in the suit property.
74. It was the further testimony of the witness that the 1st Defendant generated a letter of offer. Furthermore, it was stated that the letter of offer is dated the one dated the 5th October 2002.
75. Other than the foregoing, the witness averred that sale of the suit property was sanctioned and approved by the cabinet. However, the witness clarified that same did not see the approval by the cabinet. In addition, the witness also averred that same also did not see the consent from the 1st Defendant's board of directors.
76. On further re-examination, the witness averred that same is privy to and knowledgeable of the vesting order. Nevertheless, the witness stated that he [witnesses] discovered the vesting order in the year 2022.
77. It was the further testimony of the witness that the suit property belongs to the Plaintiff company. In this regard, the witness reiterated that the court should proceed and grant the reliefs sought at the foot of the further amended Plaintiff.
78. Other than the foregoing, the witness averred that the Plaintiff company paid the deposit of Kes.3,000,000/= only. Besides, the witness averred that the payment in question was acknowledged by the 1st Defendant. In this regard, the witness averred that the 1st Defendant issued an acknowledgement receipt namely receipt number A343429.
79. As pertains to the payments of the balance of the purchase price, the witness averred that same were paid by clearing the outstanding rates which were owing in respect of the suit property. In any event, the witness added that it is the 1st Defendant who requested the Plaintiff to clear the rates.
80. It was the further testimony of the witness that the clearance of the rates on behalf of the 1st Defendant constituted payments of the balance of the purchase price. In any event, the witness added that the 1st Defendant acknowledged the payment of the balance of the purchase price and thereafter forwarded to the Plaintiff the completion documents.
81. As pertains to the taking of possession of the suit property, the witness averred that the Plaintiff herein has never taken possession of the suit property. In particular, the witness added that the Plaintiff has not taken possession because of the frustration by the 1st and 2nd Defendants. In particular, the witness averred that the 3rd Defendant has failed to register the transfer documents that were presented for registration.



82. Other than the foregoing, it was the testimony of the witness that the Plaintiff herein has never entered into any contract/transaction with the 2nd Defendant.
83. With the foregoing testimony, the Plaintiff's case was closed.

1st Defendant's Case:

84. The 1st Defendant's case is anchored on the evidence of two [2] witnesses, namely, Justine Omoke and Timothy Kipng'etich Lel. Same testified as DW1 and DW2.
85. It was the testimony of the witness [DW1] that same is currently the assistant manager [Estates, Valuation and Agency] with the 1st Defendant. Furthermore, the witness added that same is also a registered valuer and registered estate agent.
86. It was the further testimony of the witness that by virtue of his portfolio same [witness] is conversant with the facts of the instant matter. Furthermore, the witness avers that same has also recorded a witness statement dated the 13th March 2023. In this regard, the witness sought to adopt and rely on the witness statement under reference. For good measure, the witness statement was thereafter adopted and constituted as the evidence in chief of the witness.
87. Other than the foregoing, the witness stated that same has also filed a supplementary witness statement. In this regard, the witness alluded to the witness statement dated the 3rd October 2023 and which witness statement the witness sought to adopt and rely on as his further evidence in chief.
88. Suffice it to point out that the supplementary witness statement dated the 3rd October 2023 was thereafter adopted and constituted as the further evidence in chief of the witness.
89. Additionally, the witness adverted to a letter dated the 14th July 2023 and which letter the witness sought to adopt and produce before the court. Instructively, the letter under reference was admitted as exhibit D1.
90. On cross examination by learned counsel for the 3rd and 4th Defendants, the witness contended that same is conversant with the facts of this matter. Furthermore, the witness averred that same is privy to and knowledgeable of the records of the assets of the 1st Defendant.
91. Whilst under further cross examination, the witness averred that the suit property before the court was initially registered in the name of the 1st Defendant. However, the witness added that the suit property was subsequently vested in the 2nd Defendant. In this regard, the witness stated that thereafter the 2nd Defendant was issued with the certificate of title.
92. It was the further testimony of the witness that following the vesting of the suit property in favour of the 2nd Defendant, the 2nd Defendant became the lawful owner and proprietor thereof.
93. On cross examination, by learned counsel for the 5th Defendant, the witness averred that the suit property was initially registered in the name of the 1st Defendant. However, the witness added that the suit property was thereafter vested in the name of the 2nd Defendant. At any rate, the witness added that the 1st and 2nd Defendants are related.
94. On the other hand, the witness averred that same is aware that the 2nd Defendant entered into a valid sale agreement with the 5th Defendant. Furthermore, the witness stated that the suit property was thereafter sold to and in favour of the 5th Defendant.



95. On cross examination by learned counsel for the Plaintiff, the witness averred that same has seen the documents tendered before the court by the Plaintiff. However, the witness added that the said documents did not originate from the 1st Defendant.
96. Whilst under further cross examination, the witness averred that the Plaintiff herein has never entered into and/or executed any contract with the 1st Defendant. Instructively, the witness averred that the Plaintiff's documents are fraudulent.
97. It was the further testimony of the witness that the disposal of the suit property to and in favour of the 2nd Defendant was sanctioned by the cabinet. In any event, the witness added that the authority of the cabinet is contained at the foot of the vesting order.
98. On further cross examination, the witness averred that same [witness] does not have copies of the letters contained at page 60 and 61 of the Plaintiff's list and bundle of documents. For good measure, the witness averred that those letters do not form part of the record of the 1st Defendant. In particular, the witness averred that the letters produced by the Plaintiff are fraudulent.
99. It was the further testimony of the witness that the suit property was vested in the name of the 2nd Defendant vide gazette notice. Furthermore, the witness added that the vesting order was issued in the year 2006.
100. On re-examination by learned counsel for the 1st Defendant, the witness averred that same has tendered and produced before the court documents from the records of the 1st Defendant. In particular, the witness has averred that the documents obtaining in the records of the 1st Defendant do not show any dealing and/or transaction with the Plaintiff.
101. It was the further testimony of the witness that the 1st Defendant herein did not enter into any sale agreement with the Plaintiff. In particular, it was contended that the purported sale agreement being relied upon by the Plaintiff is fraudulent.
102. Other than the foregoing, the witness averred that before any property of the 1st Defendant can be sold, there must be the consent of the board of directors and an approval from the cabinet minister. Furthermore, the witness averred that a valuation of the property would also be required.
103. Nevertheless, the witness averred that in respect of the purported sale in favour of the Plaintiff there was no valuation. In any event, the witness has stated that the property beforehand could not have been sold without valuation.
104. The second witness who testified on behalf of the 1st Defendant was one timothy Kipng'etich Lel. Same testified as DW2.
105. It was the testimony of the witness [DW2] that same is currently the finance officer of the 1st Defendant. In this regard, the witness averred that by virtue of being the finance officer, same [witness] is therefore conversant with the facts of this matter.
106. Other than the foregoing, the witness averred that same [witness] has since recorded a witness statement dated the 7th August 2023. In this regard, the witness sought to adopt and rely on the contents of the witness statement. Instructively, the witness statement under reference was adopted and constituted as the evidence in chief of the witness.
107. Other than the foregoing, the witness also averred that same has since filed a supplementary witness statement. In this regard, the witness adverted to the supplementary witness statement dated the 3rd October 2023 and which statement the witness sought to adopt and rely on. Suffice it to state that



- the supplementary witness statement was thereafter adopted and constituted as the further evidence of the witness.
108. Additionally, the witness adverted to the documents attached to the supplementary witness statement. Thereafter, the witness sought to tender and produce the documents as exhibits before the court. There being no objection to the production of the said documents, same [documents] were admitted as exhibits D2 and D3, respectively.
 109. On cross examination, by learned counsel for the 3rd and 4th Defendants, the witness averred that same [Witness] deals with the collection of revenues on behalf of the 1st Defendant. In this regard, the witness averred that by virtue of his position same would be aware of the payments made to and by the 1st Defendant. Nevertheless, the witness posited that the 1st Defendant did not receive any funds from the Plaintiff.
 110. Whilst still under cross examination, the witness averred that the 1st Defendant did not receive cheque number 032315 from the Plaintiff. However, the witness clarified that the 1st Defendant received bankers' cheque number 032315 from a third party and which payment was in respect of a different property. For coherence, the witness posited that the banker's cheque number 032315 was in respect of a property located in Kileleshwa-Nairobi.
 111. On cross examination, by learned counsel for the 5th Defendant, the witness averred that the suit property was initially owned by the 1st Defendant. However, the witness added that the suit property was subsequently vested in the name of the 2nd Defendant.
 112. It was the further testimony of the witness that the suit property was subsequently sold by the 2nd Defendant. However, the witness clarified that he does not know who is the current owner of the suit property.
 113. On cross examination by learned counsel for the Plaintiff, the witness averred that same has tendered two [2] receipts before the court. Nevertheless, the witness avers that the two receipts are in respect of different properties. It was the further testimony of the witness that the 1st Defendant did not receive any monies from the Plaintiff herein.
 114. In any event, the witness stated that the receipt being relied upon by the Plaintiff and which is at page 66 of the Plaintiff's documents is not authentic.
 115. Whilst under further cross examination, the witness averred that the letters which are contained at pages 9, 10 and 26 of the Plaintiff's bundle of documents which are purported to be on the letterhead of the 1st Defendant are fraudulent.
 116. On re-examination by learned counsel for the 1st Defendant, the witness averred that the banker's cheque number 032315 was paid in respect of L.R No. 209/7313 and not the suit property. Furthermore, the witness stated that the 1st Defendant did not receive any banker's cheque from the Plaintiff.
 117. On further re-examination, the witness averred that the 1st Defendant also did not issue any receipt to the Plaintiff herein. In any event, the witness averred that the receipt being relied upon by the Plaintiff did not emanate from the 1st Defendant.
 118. With the foregoing testimony, the 1st Defendant's case was closed.



2nd Defendant's Case:

119. The 2nd Defendant's case is anchored on the evidence of one witness, namely, Audrey Chepkoech. Same testified as DW3.
120. It was the testimony of the witness [DW3] that same is currently the estate manager of the 2nd Defendant. Furthermore, the witness averred that by virtue of being the estate manager of the 2nd Defendant same [witness] is therefore conversant with the affairs of the 2nd Defendant.
121. Other than the foregoing, the witness averred that same has since recorded a witness statement in respect of the instant matter. In this regard, the witness adverted to the witness statement dated the 8th December 2022. Furthermore, the witness thereafter sought to adopt and rely on the said contents of the witness statement. Instructively, the witness statement was thereafter adopted and constituted as the evidence in chief of the witness.
122. Additionally, the witness referenced a list and bundle of documents dated the 6th December 2022. In this regard, the witness sought to adopt and produce the documents contained at the foot thereof. There being no objection, the documents were tendered and produced before court as exhibits D1 to D7 on behalf of the 2nd Defendant.
123. On cross examination, by learned counsel for the 3rd and 4th Defendants, the witness has averred that by virtue of her portfolio, she [Witness] is the one who oversees the properties owned by the 2nd Defendant. Furthermore, the witness stated that she is in charge of sales, transfers and leasing of the 2nd Defendant's properties.
124. It was the further testimony of the witness that the suit property was part of the properties owned by the 2nd Defendant. Furthermore, the witness averred that the property in question was leased to the 5th Defendant.
125. Whilst under cross examination, the witness averred that the 2nd Defendant advertised the sale of the suit property and thereafter same received various tenders. In particular, the witness averred that the tenders were received from various persons including the 5th Defendant.
126. It was the further testimony of the witness that ultimately the 5th Defendant emerged as the highest bidder. In addition, the witness averred that the 2nd Defendant thereafter entered into and executed a sale agreement with the 5th Defendant. However, the witness added that the suit property has not been transferred to the 5th Defendant.
127. On cross examination by learned counsel for the 5th Defendant, the witness averred that it is the 5th Defendant who is currently in occupation of the suit property. Furthermore, the witness averred that the suit property was leased to and in favour of the 5th Defendant.
128. At any rate, the witness added that the lease in favour of the 5th Defendant commenced in the year 2017. On further cross examination, the witness stated that the suit property belongs to the 2nd Defendant. Furthermore, the witness added that the 2nd Defendant commenced the process of the sale of the suit property. In this regard, the witness averred that the 2nd Defendant invited tenders from various interested parties.
129. Whilst still under cross examination, the witness averred that there were various bids which were received. Additionally, the witness stated that the 2nd Defendant received tenders' bids from the 5th Defendant.



130. It was the further testimony of the witness that thereafter the 5th Defendant emerged as the highest bidder. In this regard, the witness added that the 2nd Defendant proceeded to and entered into a sale agreement with the 5th Defendant. Nevertheless, the witness clarified that what was being sold to the 5th Defendant was a portion of the suit property.
131. Other than the foregoing, the witness averred that the Plaintiff herein has never entered into any dealing and/or transaction with the 2nd Defendant. For good measure, the witness denied any claims by the Plaintiff over the suit property.
132. On cross examination by learned counsel for the Plaintiff, the witness stated that the suit property was vested in the 2nd Defendant. However, the witness added that same [witness] has never seen the original certificate of title of the suit property.
133. It was the further testimony of the witness that though same has never seen the original certificate of title same [witness] has seen a copy of the provisional certificate of title. Furthermore, the witness also averred that same has also seen the gazette notice underpinning the vesting order.
134. It was the further testimony of the witness that the suit property is currently under the occupation of the 5th Defendant. In addition, the witness added that the suit property is currently leased to Sonko Rescue Team. Furthermore, the witness added that Sonko Rescue Team is associated with the 5th Defendant.
135. Whilst still under cross examination, the witness averred that the 2nd Defendant issued a letter of offer to the 5th Defendant. Furthermore, the witness indicated that the 5th Defendant duly accepted the offer. In this regard, the witness has pointed out that there was a letter of acceptance generated by the 5th Defendant.
136. On further cross examination, the witness averred that despite entering into a sale agreement with the 5th Defendant, the 2nd Defendant has not effected the transfer in favour of the 5th Defendant.
137. On re-examination by learned counsel for the 5th Defendant, the witness confirmed that the property herein was being sold to the 5th Defendant. Furthermore, the witness stated that the sale of the suit property to the 5th Defendant has never been challenged. On the other hand, the witness averred that the property was initially leased out to Sonko Rescue Team. However, the sale of the suit property to the 5th Defendant came after.
138. Other than the foregoing, the witness averred that the suit property was vested in the 2nd Defendant. At any rate, the witness added that the vesting order was duly gazetted. Furthermore, the witness averred that neither the vesting order nor the gazette notice have been challenged to date.
139. With the foregoing testimony, the Second Defendant's case was closed.

3rd And 4th Defendants' case:

140. The 3rd and 4th Defendants' case is anchored on one witness, namely, Vincencia Juma. Same testified as DW4.
141. It was the testimony of the witness [DW4] that same is currently a land registrar stationed at Mombasa land registry. Furthermore, same stated that same was hitherto stationed at the chief land registrar's office at Nairobi. In this regard, the witness averred that by virtue of her portfolio, same acquired knowledge in respect of the Land herein and is thus conversant with the facts of the instant matter.
142. Other than the foregoing, the witness averred that same has since recorded a witness statement dated the 2nd June 2023. In addition, the witness sought to adopt and rely on the contents of the witness



- statement. Instructively, the witness statement dated the 2nd June 2023 was thereafter adopted and constituted as the evidence in chief of the witness.
143. Additionally, the witness adverted to the list and bundle documents dated the 2nd June 2023. Thereafter the witness sought to tender and produce the document[s] as exhibits on behalf of the 3rd and 4th Defendants.
 144. There being no objection to the production of the documents, same [documents] were thereafter tendered and produced as exhibits D1 to D15, respectively on behalf of the 3rd and 4th Defendant.
 145. Other than the foregoing, the witness adverted to the statement of defence dated the 2nd June 2023 and thereafter sought to adopt and rely on the contents thereof.
 146. On cross examination by learned counsel for the 1st and 2nd Defendants, the witness averred that the office of the chief land registrar received the transfer documents lodged by the Plaintiff herein. However, the witness stated that the transfer documents were never registered.
 147. Additionally, it was the testimony of the witness that there was a vesting order which vested the suit property in favour of the 2nd Defendant. The witness further averred that the vesting order was duly registered and endorsed against the title of the suit property. In any event, the witness added that the vesting order was registered on the 6th August 2009.
 148. Whilst still under cross examination, the witness averred that there was also a court order which was registered against the title of the suit property. In this regard, the witness indicated that the court order was registered in the year 2012.
 149. It was the further testimony of the Witness that though the Plaintiff lodged the transfer document in respect of the suit property, same [Plaintiff] did not surrender the original title of the suit property. Furthermore, the witness averred that the Plaintiff also did not avail the consent to transfer from the commissioner of lands.
 150. On cross examination by learned counsel for the 5th Defendant, the witness averred that before a transfer can be perfected and registered, the Applicant is obligated to pay the requisite stamp duty. Besides, the witness added that payment of stamp duty must be preceded with valuation of the property and assessment of stamp duty.
 151. It was the further testimony of the witness that the transfer documents on behalf of the Plaintiff were presented for booking on the 11th March 2010. However, the witness averred that the transfer instruments were not registered. In any event, the witness added that the property in question did not belong to the 1st Defendant as at 2010.
 152. On cross examination by learned counsel for the Plaintiff, the witness averred that in her whiteness statement, same alludes to a court order which was issued against the title of the suit property. However, the witness has added that same [Witness] does not know whether the court order related to the suit property.
 153. Whilst still under cross examination, the witness has averred that same has never seen a copy of the court order. In any event, the witness averred that same does not know whether the court order relates to an accident case.
 154. Other than the foregoing, the witness averred that the transfer documents which were presented to the Land Registry were not rejected. However, the witness quickly added that it appears that the said documents were rejected.



155. Whilst still under cross examination, the witness averred that the documents that were presented by the Plaintiff were rejected. Nevertheless, it was the evidence of the witness that stamp duty was paid.
156. It was the further testimony of the witness that a provisional certificate of title was applied for and issued in respect of the suit property. Furthermore, the witness has confirmed that a provisional certificate was issued in favour of the 2nd Defendant.
157. On further cross examination, the witness averred that the issuance of a provisional certificate of title is ordinarily preceded by execution of a statutory declaration and thereafter publication of a gazette notice. In this regard, the witness averred that same has produced before the court a copy of the gazette notices.
158. On re-examination by learned counsel for the 3rd and 4th Defendants, the witness stated that the Plaintiff herein presented various documents for registration. However, the witness added that the said documents were never registered. In any event, the witness averred that the documents were never registered because there was in existence a court order.
159. Other than the foregoing, the witness averred that the documents were also not registered because at the material point in time, the suit property belonged to the 2nd Defendant and not the 1st Defendant. In this regard, the witness clarified that the transfer instrument could not have been registered without the sanction of the 2nd Defendant.
160. Other the foregoing, the witness indicated that the provisional certificate of title was lawfully issued to and in favour of the 2nd Defendant.
161. With the foregoing testimony, the 3rd and 4th Defendants' case was duly closed.

The 5th Defendat's Case:

162. The 5th Defendant's case is anchored on the evidence of one witness, namely, H.E Mike Mbuvi Sonko. Same testified as DW5.
163. It was the testimony of the witness [DW5] that same is the former governor of the city county government of Nairobi. Furthermore, the witness added that same is the patron of Sonko Rescue Team. In addition, it was the testimony of the witness that same [witness] is also a director of the 5th Defendant.
164. Arising form the foregoing, the witness averred that same is therefore conversant with the facts of the instant matter. In any event, the witness averred that same has since recorded a witness statement dated the 18th June 2024. In this regard, the witness sought to adopt and rely on the contents of the witness statement. Suffice it to point out that the witness statement was thereafter adopted and constituted as the evidence in chief of the witness.
165. Other than the foregoing, the witness [DW5] adverted to the list and bundle of documents dated the 1st March 2023 and thereafter same sought to tender and produce in evidence the documents at the foot of the said List. There being no objection to the production of the documents, same were admitted in evidence as exhibits D1 to D8 on behalf of the 5th Defendant.
166. Other than the foregoing, the witness adverted to the statement of defence dated the 1st March 2023. In this regard, the witness implored the court to adopt and rely on the contents of the statement of defence.



167. On cross examination, by learned counsel for the 1st and 2nd Defendants, the witness averred that the suit property was leased to the Sonko Rescue Team. Furthermore, the witness added that Sonko Rescue Team has been in occupation of the suit property since the year 2017.
168. Other than the foregoing, the witness stated that the 2nd Defendant advertised tender for the sale of the suit property. In this regard, the witness averred that the 5th Defendant tendered to purchase the suit property. In any event, the witness added that the 5th Defendant emerged as a highest bidder.
169. On cross examination by learned counsel for the 3rd and 4th Defendants, the witness averred that the 5th Defendant purchased a portion of the suit property. In any event, the witness added that the 5th Defendant is in occupation of the suit property.
170. On cross examination by learned counsel for the Plaintiff, the witness [DW5] averred that the 5th Defendant emerged as the successful bidder. In this regard, the witness has stated that the tender documents have been produced before the court.
171. It was the further testimony of the witness that even though the 5th Defendant emerged as the successful bidder, the suit property has not been transferred to and in favour of the 5th Defendant. Nevertheless, the witness averred that it is the 5th Defendant who is in occupation of the suit property.
172. On re-examination by learned counsel for the 5th Defendant, the witness averred that the 5th Defendant was issued with a notification of award. Thereafter, the witness added that the 5th Defendant generated a letter of acceptance.
173. On further re-examination, the witness confirmed that the 5th Defendant is a purchaser of the suit property. In addition, the witness added that the tender was lawfully awarded to the 5th Defendant.
174. Additionally, the witness [DW5] clarified that the 5th Defendant only purchased a portion of the suit property. In any event, the witness added that the 5th Defendant is in the process of concluding the sale transaction in respect of the designated portion of the suit property.
175. As pertains to the Plaintiff's claim to the suit property, the witness averred that the Plaintiff herein has no stake in the suit property. In any event, the witness added that the Plaintiff's claim to the suit property is a big joke. Furthermore, the witness averred that the Plaintiff's claim to the suit property is founded on fraudulent documents.
176. With the foregoing testimony, the 5th Defendant's case was closed.

Parties' Submissions:

177. Upon the close of the hearing, the advocates for the respective parties covenanted to file and exchange written submissions. In this regard, the court proceeded to and circumscribed the timelines for the filing and exchange of the written submissions.
178. Suffice it to point out that the Plaintiff thereafter proceeded to and filed written submissions dated the 27th September 2024 and in respect of which the Plaintiff has highlighted six [6] issues for consideration. The issues highlighted by the Plaintiff include whether the notice of preliminary objection dated the 14th August 2023 is meritorious; whether there was a proper sale of the suit property between the Plaintiff and the 1st Defendant; whether the 1st Defendant had any title in the suit property to pass to the 2nd Defendant; whether the 1st Defendant has proved fraud against the Plaintiff; whether the 5th Defendant has proved its case and whether the Plaintiff is entitled to the reliefs sought.



179. Additionally, the Plaintiff also filed rejoinder written submissions dated the 25th October 2024 and in respect of which the Plaintiff has highlighted two [2] salient issues, namely, whether there was a valid contract between the Plaintiff and the 1st Defendant and whether the documentation relied on by the Plaintiff comprise of forgeries or otherwise.
180. The 1st and 2nd Defendants filed written submissions dated the 23rd October 2024 and wherein the 1st and 2nd Defendants have highlighted four [4] salient issues. The issues highlighted by the 1st and 2nd Defendants include whether the contract for sale of the suit property was illegal; whether there was breach of contract by the Plaintiff; whether the suit property was lawfully vested on the 2nd Defendant and whether the Plaintiff is entitled to the prayers sought.
181. The 3rd and 4th Defendants filed written submissions dated 28th October 2024 and in respect of which same has highlighted two[2] issues. The issues canvassed on behalf of the 3rd and 4th Defendants include whether the suit property was lawfully vested on the 2nd Defendant and whether the Plaintiff is entitled to the reliefs sought.
182. The court has reviewed and evaluated the written submissions filed by and on behalf of the parties. Furthermore, the court has also considered the issues highlighted and canvassed at the foot of the respective submissions.
183. Suffice it to point out that even though the court has neither reproduced nor rehashed the written submissions, the court has nonetheless taken the contents of the written submissions into account. Additionally, the court has also internalized the various decision adverted to and highlighted at the foot of the written submissions.

Issues For Determination:

184. Having reviewed the pleadings filed by the parties; the evidence tendered and the written submissions filed by the parties, the following issues crystalize[emerge] and are thus worthy of determination;
- i. Whether the Plaintiff's suit/cause of action is barred by statute or otherwise.
 - ii. Whether the Plaintiff herein has established and demonstrated the existence of a lawful contract between the Plaintiff and the 1st Defendant or otherwise.
 - iii. What reliefs/remedies, if any are available to the parties.

Analysis And Determination:

Issue Number 1 Whether the Plaintiff's suit/cause of action is barred by statute or otherwise.

185. The Plaintiff's suit beforehand is predicated on the sale agreement that was entered into and executed between the Plaintiff and the 1st Defendant on the 7th February 2003. According to the Plaintiff, the 1st Defendant advertised the sale of the suit property, namely, L.R No. 209/6507 in the daily newspapers and thereafter the Plaintiff expressed an interest in purchasing/acquiring the suit property.
186. Additionally, PW2 testified that arising from the newspaper advertisement, the Plaintiff expressed her interests in the acquisition of the suit property. In this regard, PW2 ventured forward and posited that the expression of interests by the Plaintiff was acknowledged by the 1st Defendant culminating into a letter of offer being issued in favour of the Plaintiff. To this end, PW2 referenced the letter of offer dated the 15th October 2002.



187. It was the further testimony of PW2 that upon the issuance of the letter of offer, the Plaintiff proceeded to and executed same and hence confirmed her acceptance of the offer to purchase the suit property.
188. First forward, it was the evidence of Pw2 that subsequently, the Plaintiff and the 1st Defendant entered into and executed a sale agreement dated the 7th February 2003. It is this sale agreement which underpins the subject suit.
189. For good measure, the Plaintiff herein has contended that despite entering into [sic] the sale agreement under reference, the 1st Defendant failed to perfect the transfer and registration of the suit property in favour of the Plaintiff. In this regard, it has been contended that the actions by and on behalf of the 1st Defendant constitutes breach of contract.
190. On the other hand, the Plaintiff has also contended that the failure to effect the transfer of the suit property to and in favour of the Plaintiff is also informed of fraud on the part of the Defendants. Suffice it to underscore that at the foot of paragraph 24 of the further amended Plaint, the Plaintiff has highlighted the particulars of fraud as against the 1st Defendant.
191. Similarly, the Plaintiff has repeated what is contended to be particulars of fraud on the part of the 1st Defendant at the foot of paragraph 25 of the further amended Plaint.
192. As pertains to the 2nd Defendant, particulars of fraud have been highlighted and elaborated at the foot of paragraph 25 of the amended Plaint. Besides, what is contended to be fraud on behalf of the 3rd Defendant have also been highlighted at the foot of paragraph 25 of the further amended Plaint.
193. From the foregoing background [which is discernible from the body of the further amended Plaint] the Plaintiff's claim/cause of action can be summarized as hereunder;
- i. Breach of contract by the 1st Defendant in failing to facilitate the transfer and registration of the suit property in favour of the Plaintiff.
 - ii. Fraud on the part of the 1st Defendant in effecting and facilitating the registration of a vesting order in favour of the 2nd Defendant.
 - iii. Fraud on the part of the 2nd Defendant in partaking of and benefiting from the vesting order in respect of the suit property.
 - iv. Fraud on the part of the 3rd Defendant in inter-alia illegally issuing a provisional certificate in favour of the 2nd Defendant and failing to register the transfer documents on behalf of the Plaintiff.
194. Flowing from the foregoing position, what comes to the fore is that the Plaintiff's claim touches on breach of contract by the 1st Defendant. In fact, as against the 1st Defendant, the Plaintiff is seeking to compel same to specifically perform her part of the contract, namely, the sale agreement entered into on the 7th February 2003.
195. As against the 1st Defendant, it is important to underscore that a suit against the 1st Defendant which is underpinned by an action or omission by the 1st Defendant in pursuance of her powers is regulated by Kenya Railways Act, Chapter 397 Laws of Kenya. In this regard, it suffices to posit that if the Plaintiff was keen to agitate a claim against the 1st Defendant, then the Plaintiff must be guided by the relevant provisions of Kenya Railways Act [supra].
196. Section 87 of the Kenya Railways Act [supra] stipulates the limitation period for the filing and/or taking out of a suit against the 1st Defendant. Instructively, the provisions of Section of 87 of the Act, stipulates as hereunder;



87. Limitation

Where any action or other legal proceeding is commenced against the Corporation for any act done in pursuance or execution, or intended execution, of this Act or of any public duty or authority or in respect of any alleged neglect or default in the execution of this Act or of any such duty or authority, the following provisions shall have effect—

- (a) the action or legal proceeding shall not be commenced against the Corporation until at least one month after written notice containing the particulars of the claim, and of intention to commence the action or legal proceeding, has been served upon the Managing Director by the plaintiff or his agent; and
- (b) the action or legal proceeding shall not lie or be instituted unless it is commenced within twelve months next after the act, neglect or default complained of or, in the case of a continuing injury or damage, within six months next after the cessation thereof.

197. My interpretation of Section 87[b] of the Kenya Railways Act drives me to the conclusion that it was incumbent upon the Plaintiff herein to raise and commence the suit seeking to enforce the contract between itself and the 1st Defendant, if at all within twelve [12] months from the accrual of the cause of action. To this end, it is not lost on the court that the sale agreement which is adverted to had a completion date.
198. As pertains to the completion date, it is stipulated that the sale agreement/contract between the Plaintiff and the 1st Defendant was to be completed within 60 days from the date of the agreement. Furthermore, the special conditions [A] underscores that time shall be of essence.
199. To my mind, if the contract between the Plaintiff and the 1st Defendant was not concluded with the 60-day period, it then means that the 1st Defendant was in breach of the contract. In this regard, it then behooved the Plaintiff to agitate her cause of action/ claim within the lapse of the 60 days from the Date of execution of the sale agreement.
200. Arising from the foregoing and taking into account that the impugned sale agreement was entered into and executed on the 7th February 2003, it means that the 60-day period would have lapsed on or about the 8th April 2003. In this regard, the cause of action for breach or non compliance with the contract would accrue from the 9th April 2003.
201. In my humble view, the Plaintiff would have been obligated to commence the suit and/or proceedings herein within twelve months w.e.f 9th April 2003. Consequently, and in this regard, there is no gainsaying that using the first perspective, the instant suit was filed out the prescribed limitation. [See Section 87[b] of Kenya Railways Act].
202. To this end, it suffices to cite and reference the decision in the case of *Diana Katumbi Kii v Reuben Musyoki Muli (Civil Appeal 211 of 2015)* [2018] KECA 860 (KLR) (Civ) (19 January 2018) (Judgment), where the court considered the timeline for commencement of a suit for breach of contract.
203. For coherence, the court of appeal stated thus;
 17. A cause of action in contract arises from breach of the contract and not at the time it is executed. According to the author in the Journal of International Banking and Financial Law: " What's the Limit" (2007) 11 JIBFL 642:-



"In contract the cause of action accrues when the breach occurs, but in tort the cause of action accrues when damage is first sustained. The cause of action, whether in tort or contract, arises regardless of whether or not the claimant could have known about the damage."

We agree with that exposition.

204. The second perspective turns on the aspect that the 1st Defendant procured and forwarded the completion documents to the Plaintiff. In this regard, it is worthy to recall that PW2 contended that the 1st Defendant executed and forwarded the completion document to the Plaintiff for purposes of lodgement with the chief land registrar.
205. However, PW2 contended that despite presentation/lodgement of the transfer documents with the 3rd Defendant, the transfer documents were neither registered nor rejected. Nevertheless, the obvious position is to the effect that the suit property was [sic] not transferred to and in favour of the Plaintiff.
206. Using the year 2009 as the benchmark, it then means that the failure to have the suit property transferred in favour of the Plaintiff was yet another aspect of breach of contract. In this regard, the computation of time for purposes of ascertaining limitation would run from the 6th August 2009 and not otherwise.
207. In my humble view, the 12 months period within which the Plaintiff ought to have commenced a suit [using the second perspective] would lapse on or about August 2010 or thereabout. Instructively, by the time the instant suit was being filed the prescribed limitation period had lapsed and stood extinguished.
208. The third perspective that also impacts on the computation of time is discernible from the date of the execution of the vesting order. There is no gainsaying that the vesting order was gazetted in the year 2006. Suffice it to point out, that the Plaintiff's complaint is that the vesting order was fraudulently executed by the 1st Defendant with a view to divesting the Plaintiff of her right to and interests over the suit property.
209. Insofar as the vesting order was gazetted and published on the 7th September 2006, any action claiming and/or contending that the said vesting order was fraudulent also ought to have been taken within 12 months from the publication of the vesting order and not otherwise.
210. In my humble view, the limb of the Plaintiff's case that is underpinned on the publication and legality of the vesting order, was also filed well out of the prescribed timeline.
211. The fourth perspective that is also important in discerning whether the suit as against the 1st Defendant was timeously filed relates to the contention by PW2 that the Plaintiff only discovered the existence of the vesting order in the year 2018. To this end, it suffices to take cognizance of the evidence of PW2 whilst under cross examination by learned counsel for the 5th Defendant.
212. For good measure, PW2 stated as hereunder;

"The Plaintiff did not challenge the vesting order. I was not aware of the vesting order. We have not challenged the vesting order. I only got to know of the vesting order around the year 2018".
213. Assuming for the sake of arguments only, that the Plaintiff herein only got to know of the vesting order in the year 2018, the 12 months period would then be deemed to run from the date of such discovery. Instructively, the 12 months would stand extinguished in the year 2019.



214. Notwithstanding the foregoing, it is not lost on this court that whenever an instrument is published in the Kenya gazette, the legal presupposition is that the information is deemed to have reached all and sundry. Suffice it to posit that the Plaintiff herein was/is no exception.
215. The fifth perspective that also impacts on determination of whether the suit as against the 2nd Defendant was filed within the prescribed timeline touches on the issuance of the provisional certificate of title. Notably, the other limb of the Plaintiff's claim is to the effect that the issuance of the provisional certificate in favour of the 2nd Defendant was a fraud. In this regard, there is no gainsaying that the Plaintiff ought to have filed the suit predicated on fraud within the 12 months duration.
216. Turning to the claim against the 3rd Defendant, it is imperative to point out that the claims as against the 3rd Defendant are regulated by the provisions of Public Authorities Limitation of Action Act, Chapter 39 Laws of Kenya. Instructively, Section 3 of the Act, is pertinent.
217. Section 3 of the said Act [supra] stipulates as hereunder;
3. Limitation of proceedings
 - (1) No proceedings founded on tort shall be brought against the Government or a local authority after the end of twelve months from the date on which the cause of action accrued.
 - (2) No proceedings founded on contract shall be brought against the Government or a local authority after the end of three years from the date on which the cause of action accrued.
 - (3) Where the defence to any proceedings is that the defendant was at the material time acting in the course of his employment by the Government or a local authority and the proceedings were brought after the end of—
 - (a) twelve months, in the case of proceedings founded on tort; or
 - (b) three years, in the case of proceedings founded on contract, from the date on which the cause of action accrued, the court, at any stage of the proceedings, if satisfied that such defendant was at the material time so acting, shall enter judgment for that defendant.
218. Suffice it to point out that the claim against the 3rd Defendant touches on fraud. In particular, the fraud that is attributed to the 3rd Defendant includes issuing a provisional certificate to the 2nd Defendant dated the 14th October 2008 and failing to register the transfer instruments which were presented on the 6th August 2009.
219. In my humble view, the twin claims as against the 3rd Defendant constitutes causes of actions in tort. To this end, it was incumbent upon the Plaintiff to move the court, were apposite, within 12 months from the accrual of the cause of action. However, there is no gainsaying that the suit herein was filed long after the causes of action had lapsed and or extinguished.
220. Arising from the foregoing discussion, I come to the conclusion that the Suit by and on behalf of the Plaintiff herein, which was filed on the 28th July 2022 was filed outside the prescribed timelines. In this regard, the suit is statute barred.
221. Furthermore, there is no gainsaying that a suit/cause of action which is statute barred cannot be filed and/or prosecuted before a court of law. In any event, if such a suit that is statute barred is presented



to the court, then the court must decline to take cognizance of same. Instructively, a cause of action which is statute barred is rendered redundant and otiose.

222. To underscore the import and implication of limitation on a cause of act, it is instructive to take cognizance of the holding in the case of IGA VS Makerere University [1972] EA 65 where Mustafa, J. A. held as follows:-

“A Plaintiff which is barred by limitation is a Plaintiff “barred by law”. Reading these provisions together it seems clear to me that unless the appellant in this case had put himself within the limitation period by showing grounds upon which he could claim exemption the Court “shall reject” his claim. The appellant was clearly out of time, and despite opportunity afforded by the Judge he did not show what grounds of exemption he relied on, presumably because none existed. The limitation Act does not extinguish a suit or action itself but operates to bar the claim or remedy sought for, and when a suit is time barred, the Court cannot grant the remedy or relief sought.”

Law, Ag. V. P. in the same case inter alia stated thus:

“... The effect then is that if a suit is brought after the expiration of the period of limitation, and this is apparent from the Plaintiff, the Plaintiff must be rejected.”

223. The effect[s] of the statute of limitation on a cause of action was also highlighted in the case of Dhanesvar V Mehta vs. Manilal M Shah [1965] EA 321 where it was stated:

“The object of any limitation enactment is to prevent a plaintiff from prosecuting stale claims on the one hand, and on the other hand to protect a defendant after he had lost the evidence for his defence from being disturbed after a long lapse of time. The effect of a limitation enactment is to remove remedies irrespective of the merits of the particular case”.

224. Other than the foregoing decisions, the implication of the law of limitation on a cause of action was also adverted to in the case of Gathoni vs Kenya Cooperative Creameries Limited (Civil Application No. 122 of 1981)[1982] ekr:

“The law on limitation is intended to protect defendants against unreasonable delay in bringing of suits against them. The statute expects the intending plaintiff to exercise reasonable diligence and to take reasonable steps in his own interest.”

225. Arising from the foregoing analysis, my answer to issue number one [1] is to the effect that the Plaintiff's suit which is primarily based on breach of contract and fraud, is statute barred taking into account inter-alia the provisions of Section 87[b] of the Kenya Railways Act, Chapter 397 Laws of Kenya and Section 3 of Public Authorities *Limitation of Actions Act*.

Issue Number 2 Whether the Plaintiff herein has established and demonstrated the existence of a lawful contract between the Plaintiff and the 1st Defendant or otherwise.

226. PW2 testified and informed the court that the Plaintiff herein entered into and executed a lawful sale agreement with the 1st Defendant. In this regard, PW2 reference the sale agreement dated the 7th February 2003.
227. It was the further evidence of PW2 that the sale agreement was executed by a single director on behalf of the Plaintiff. Furthermore, the witness posited that the agreement was executed by the managing director and corporation secretary of the 1st Defendant, respectively.



228. Additionally, PW2 testified that the sale of the suit property was duly approved by the board of directors of the 1st Defendant. Besides, PW2 also contended that the sale under reference also attracted the cabinet approval. In this regard, PW2 highlighted the letters dated the 31st October 2002 and 5th November 2002, respectively.
229. Nevertheless, it is worth recalling that PW2 did not tender and/or produce before the court the consent of the board of directors of the 1st Defendant. Furthermore, Pw2 also did not produce before the court the approval, if any, by the cabinet, which sanctioned the sale or alienation of the suit property [sic] to the Plaintiff.
230. As pertains to the question of the consent and approval, it is imperative to revert back to the evidence of PW2 whilst under cross examination by learned counsel for the 1st and 2nd Defendants.
231. PW2 stated thus;
- “I have not tendered and produced any letter of acceptance of the Plaintiff. I have indicated that there was an approval by the cabinet. Referred to page 134 of the Plaintiff’s bundle of documents and the witness states that the document is a letter to the chief land registrar. I have alluded to the approval and consent by the cabinet and the board of directors of Kenya Railways. The document relating to the consent is dated 5th November 2002. However, i do confirm that the letter in question speaks to the 1st Defendant saying that the same were in the process of obtaining a consent. I do confirm that i have not avail to the court a copy of the consent and approval”.
232. From the excerpt which has been reproduced in the preceding paragraph, it is apparent that PW2 is conceding that same did not tender and/or produce before the court evidence of the consent by the board of directors of the 1st Defendant. Similarly, PW2 is also conceding that same has not produced evidence of the approval by the cabinet.
233. Suffice it to underscore that it is the Plaintiff who is contending that the sale of the suit property to and in her favour was duly sanctioned by the board of directors of the 1st Defendant. Furthermore, it is also the Plaintiff who is contending that the impugned sale was approved by the cabinet in accordance with the law.
234. Having made the assertion that the sale/contract entered into with the 1st Defendant was legal and lawful, it was incumbent upon the Plaintiff to tender and place before the court evidence of the requisite consent and the approval by the cabinet. Instructively, the burden of proving the twin aspects fell and laid on the shoulders of the Plaintiff.
235. However, I beg to underscore that PW2 failed to discharge the burden of proof in accordance with the provisions of Section 107, 108 and 109 of the Evidence of Act, Chapter 80 Laws of Kenya. Suffice it to underscore that a failure to discharge the burden of proof negates the claim by the Plaintiff herein.
236. As pertains to the burden of proof and on whom same lies, it is worthy and apposite to cite and reference the holding of the Supreme Court of Kenya in the case of *Gwer & 5 others v Kenya Medical Research Institute & 3 others* (Petition 12 of 2019) [2020] KESC 66 (KLR) (Civ) (10 January 2020) (Judgment), where the supreme court of Kenya stated and held thus;
49. Section 108 of the *Evidence Act* provides that, “the burden of proof in a suit or procedure lies on that person who would fail if no evidence at all were given on either side;” and section 109 of the Act declares that, “the burden of proof as to any particular fact lies on the person who



wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.”

50. This Court in Raila Odinga & others *v. Independent Electoral & Boundaries Commission & others, Petition No. 5 of 2013*, restated the basic rule on the shifting of the evidential burden, in these terms:...a Petitioner should be under obligation to discharge the initial burden of proof before the Respondents are invited to bear the evidential burden....”
51. In the foregoing context, it is clear to us that the petitioners, in the instant case, bore the overriding obligation to lay substantial material before the Court, in discharge of the evidential burden establishing their treatment at the hands of 1st respondent as unconstitutional. Only with this threshold transcended, would the burden fall to 1st respondent to prove the contrary. In the light of the turn of events at both of the Superior Courts below, it is clear to us that, by no means, did the burden of proof shift to 1st respondent.
237. Back to the question of the consent of the board of directors and the cabinet approval. Notably, the necessity to procure and obtain the consent of the board is highlighted at the foot of Sections 13 and 14 of Kenya Railways Act, Chapter 397 Laws of Kenya.
238. The provisions of Sections 13[2] and 14 of the Act [supra], states as hereunder;
 - (2) Subject to this Act, the powers conferred by subsection
 - (1) shall include all such powers as are necessary or advantageous and proper for the purposes of the Corporation and in particular, without prejudice to the generality of the foregoing, shall include power—
 - (a) to construct or improve any railway, inland waterways port, ferry, road, bridge, building or any other necessary or desirable works required for the purposes of the Corporation;
 - (b) to operate trains and to acquire, construct, manufacture, maintain or repair anything required for the purposes of the Corporation;
 - (c) to carry on any business necessary or desirable to be carried on for the purposes of the Corporation and to act as agent for any services of the Government in the provision of any agreed function;
 - (d) to acquire, construct, manufacture, maintain or repair waterways or electric generating plant or any other works, plant or apparatus necessary or desirable for the supply or transmission of water or of electric energy for the purposes of the Corporation and to supply any such water or electric energy to any person;
 - (e) subject to the approval of the Minister in charge thereof, to alter the course of, or raise or lower the level of, any watercourse or road if such alteration, raising or lowering is necessary for the purposes of the Corporation;
 - (f) to determine, impose and levy rates, fares, charges, dues or fees for any service performed by the Corporation or for the use by any person of the facilities provided by the Corporation or for the grant to any person of any licence, permit or certificate;
 - (g) to prohibit, control or regulate—



- i. the use by any person of the services performed, or the facilities provided, by the Corporation;
 - ii. the presence of any person, vessel, vehicle or goods within any inland waterways port or on any premises occupied by the Corporation for the purposes of the Corporation;
- (h) to sell, let or otherwise dispose of any property, movable or immovable, which in the opinion of the Board is not necessary for the purposes of the Corporation: Provided that the Corporation shall not sell, let or otherwise dispose of any building or land placed at its disposal by the Government otherwise than with the consent of, and on conditions agreed by, the Government;
- (i) to provide houses and other accommodation for employees;
- (j) to act as agent for any person engaged, whether within Kenya or elsewhere, in the performance of the services or the provision of facilities of a kind similar, or complementary to, those performed or provided by the Corporation;
- (k) to enter into agreements with any person—
 - (i) for the supply, construction, manufacture, maintenance or repair by that person of any property, movable or immovable, necessary or desirable for the purposes of the Corporation;
 - (ii) for the performance or provision by that person of any of the services or the facilities which may be performed or provided by the Corporation;
 - (iii) for the payment, collection or apportionment of any fares, rates, charges or other receipts arising out of the performance or the provision by that person of any such services or facilities and, for such purposes, to finance or assist in financing the activities of the person, whether by way of loan, the holding of stocks, shares or securities, the guaranteeing of interest or the retention of any stocks, shares or securities or otherwise;
- (l) to enter into an agreement with any person carrying on business as a carrier of passengers or goods, whether within Kenya or elsewhere, providing for the carriage of passengers or goods, by or on behalf of the Corporation, and of that person, under one contract or at a through fare or rate;
- (m) to hold shares in any company or other body and to establish or acquire any subsidiary company; and
- (n) to enter into any arrangement with the Kenya Ports Authority which, in the opinion of the Board, will promote or secure the provision, or improved provision, of any service or facilities which they may separately provide and without prejudice to the generality thereof any such arrangement or agreement may include provisions relating to—



- (i) the use by either party of the facilities or equipment maintained by the other;
 - (ii) the temporary employment of staff of one party by the other on secondment or otherwise;
 - iii. the charges made in respect of the use of any service or facility to which the arrangement or agreement relates;
 - iv. the financing of any project by either or both parties;
 - v. research connected with any existing service or facility provided by either party or in relation to any service or facility under consideration; and
 - vi. the joinder in the arrangement or agreement by any other person.
- (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: 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.
239. Other than the provisions of Kenya Railways Act, which underpin the necessity to procure and obtain the consent of the board of directors, there is also the provisions of Section 13[1] of the State Corporation Act which underpins the necessity to procure the approval of the minister and the national treasury.
240. For ease of appreciation Section 13[1] of the *State Corporations Act*, stipulates as hereunder;
- 13.
- (1) The assets of a state corporation may be disposed of—
 - (a) if they are current assets in the normal course of business carried on by that state corporation;
 - (b) where the disposal and the utilization of the proceeds have been taken into account in an annual estimate prepared and approved in accordance with section 11;
 - (c) by way of sale or otherwise with the approval of the Minister and the Treasury where such disposal has not been taken into account in the estimates.
241. In the absence of the consent of the board of directors of the 1st Defendant and in the absence of the requisite approval of the minister and the national treasury, it then means that the impugned sale agreement/contract being relied upon by the Plaintiff herein was illegal, unlawful and void for all intents and purposes.
242. To this end, what comes to the mind of the court is that the Plaintiff is before the court seeking to have the court to help same to enforce an illegal contract which is contrary to and in violation of mandatory provisions of the Kenya Railways Act and State Corporation Act, respectively.
243. Notably, a court of law cannot lend its might to towards the enforcement of an illegal contract. In this regard, it suffices to adopt and reiterate the holding of the Court of Appeal in the case of Mapis



Investment (K) Ltd v Kenya Railways Corporation (Civil Appeal 14 of 2005) [2005] KECA 358 (KLR) (18 November 2005) (Ruling), where the court stated and held as hereunder;

“Ex turpi causa non oritur action. This old and wellknown legal maxim is founded in good sense, and expresses a clear and well recognised legal principle, which is not confined to indictable offences. No court ought to enforce an illegal contract or allow itself to be made the instrument of enforcing obligations alleged to arise out of a contract or transaction which is illegal, if the illegality is duly brought to the notice of the court, and if the person invoking the aid of the court is himself implicated in the illegality. It matters not whether the defendant has pleaded the illegality or whether he has not. If the evidence adduced by the plaintiff proves the illegality the court ought not to assist him.”

244. Other than the dictum referenced in the preceding paragraph, it is also important to underscore that where the impugned transaction is void, same cannot birth any legitimate claim or otherwise.
245. In this regard, it suffices to reiterate the time-honored exposition of the law in the case of Macfoy vs. United Africa Co. Ltd [1961] 3 All E.R. 1169; where Lord Denning while delivering the opinion of the Privy Council at page 1172 (1) said;
- “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 more ado, though it is sometimes convenient to have the Court 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.”
246. Other than the illegality which impacts on the sale agreement dated the 7th February 2003, there is yet another interesting perspective that merits discussion and determination. This perspective touches on and concerns whether there was any consideration paid at the foot of the impugned sale agreement.
247. To start with PW2 contended that the Plaintiff paid the initial deposit vide bankers’ cheque number 032315 in the sum of Kes.3, 000, 000/= only. For good measure, the contention that the deposit was paid vide the named banker’s cheque is adverted to at the foot of the letter dated 15th November 2002.
248. Nevertheless, it is imperative to recall that even though the letter dated the 15th November 2002 adverts to the cheque number 032315, however no copy of [sic] the said cheque has been annexed to the impugned letter. Furthermore, no copy of the said cheque was tendered before the court.
249. Other than the foregoing, the Plaintiff contended that upon the remittance of the said cheque, the 1st Defendant generated and issued a receipt in favour of the Plaintiff. To this end, the witness [PW2] adverted to receipt number 3429.
250. However, it is worthy to recall that DW2 tendered in evidence the duplicate copy of the said receipt number 343429 and it transpired that the said receipt was issued to and in respect of a different person. For good measure, it was established that the said receipt had no correlation to the suit property.
251. On the other hand, it is also worth recalling that DW2 was also able to extract the information pertaining to bankers’ cheque number 032315. Instructively, the said banker’s cheque was paid to the 1st Defendant by M/s Ranjinder Kapila Advocates and same was in respect of L.R No. 209/7313. For good measure, the said cheque had nothing to do with the Plaintiff herein and the suit property.
252. The question that does arise is whether the Plaintiff herein ever paid the requisite consideration or at all. Nevertheless, the totality of the evidence on record and which PW2 was unable to controvert or



- rebut points to a scenario where the Plaintiff was seeking to ride on the back of a bankers cheque which was not paid by the Plaintiff.
253. As if the foregoing is not enough, the Plaintiff herein also brought forth the sale agreement and where it is contended in the body thereof that the entire purchase price stood paid as at the 7th February 2003. [See clause 3 of the impugned sale agreement].
254. However, during cross examination, PW2 conceded that what constituted the balance of the purchase price was paid in the year 2010. Furthermore, PW2 stated that the payment was in terms of offsetting the outstanding rates that had accrued at the foot of the suit property.
255. For ease of appreciation, it is imperative to reproduce the evidence of PW2 whilst under re-examination by own counsel.
256. Same stated as hereunder;
- “I paid the balance of the purchase price. I paid the rates on behalf of the 1st Defendant. I paid the rates at the request of the 1st Defendant”.
257. Whilst under further re-examination, PW2 stated thus
- “The demand for rates showed that the balance due on account for rates was Kes.11, 487, 389/= only. I do confirm that I proceeded to and paid the rates on behalf of the 1st Defendant”.
258. For the sake of completeness, PW2 thereafter tendered and produced before the court exhibit 12 which is the demand for rates and which demand for rates underpins the contention that the rates were paid on behalf of the 1st Defendant. Notably, the demand for rates under reference is dated 9th February 2010.
259. Flowing from the foregoing, the puzzle that remains unresolved relates to how the sale agreement executed on the 7th February 2003 would reflect that the full purchase price had [sic] been paid yet that is not the correct position.
260. Without belabouring the point, the case beforehand brings to the fore a classic scenario of unparallel fraud. A kind of fraud that is propagated blatantly and without due regard to the law and common sense.
261. To my mind, the answer to issue number two [2] is that the Plaintiff herein did not enter into and/or execute any lawful sale agreement/contract with the 1st Defendant. To the contrary, the documentation relied upon and propagated by the Plaintiff constitutes blatant fraud and no wonder DW5 contended [asserted] the Plaintiff's claim to the suit property is a big joke.

Issue Number 3 What reliefs/remedies, if any are available to the parties.

262. The Plaintiff herein has sought for a plethora of reliefs at the foot of the further amended Plaint dated the 24th January 2023. Pertinently, the Plaintiff has sought a declaration that the 1st Defendant be compelled to facilitate the completion of the sale agreement and the consequential transfer of the suit property in favour of the Plaintiff.
263. Additionally, the Plaintiff has also sought for a declaration that the vesting order which was gazetted vide Kenya gazette on the 7th September 2006, was not lawful. For good measure, the Plaintiff has contended that the suit property was not available for purpose of vesting in favour of the 2nd Defendant.



264. Other than the foregoing, the Plaintiff has also sought for an order cancelling legal notice number 169 and which essentially underpinned the vesting order and the consequential registration of the suit property in favour of the 2nd Defendant.
265. Be that as it may, whilst discussing issue number two [2] hereinabove, this court has reached various findings. Instructively, the court has found and held that the impugned contract was contrary to and in violation of the Section 13[2] of the Kenya Railways Act, Chapter 397 Laws of Kenya.
266. On the other hand, the court has also found and held that the peremptory approval from the cabinet and national treasury in accordance with Section 13 [1] of the State Corporation Act was also not obtained.
267. Arising from the foregoing, there is no gainsaying that the reliefs sought by and on behalf of the Plaintiff herein are not only misconceived but same are also legally untenable. For good measure, the reliefs sought are vitiated to the root. In any event, a court of law cannot be called upon to lend its authority towards enforcement of an illegality.
268. In a nutshell, it is my finding and holding that the Plaintiff is not entitled to the reliefs sought or at all.

Final Disposition:

269. Flowing from the discussion [details highlighted in the body of the judgment], there is no gainsaying that the Plaintiff herein has not proved her claims to the requisite standard.
270. Furthermore, there is also no gainsaying that the Plaintiff's suit and the claims attendant thereto were filed outside the prescribed timelines. [See Section 87[b] of the Kenya Railways Act, Chapter 397 Laws of Kenya and Section 3 of the Public Authorities *Limitation of Actions Act*, Chapter 39 Laws of Kenya].
271. In the premises, the final orders that commend themselves to the court are as hereunder;
- i. The Plaintiff's suit be and is hereby dismissed.
 - ii. Costs of the suit be and are hereby awarded to the Defendants. Same to be agreed upon and in default to be taxed in the conventional way.
272. It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 14TH DAY OF NOVEMBER 2024

OGUTTU MBOYA,

JUDGE.

In the presence of:

Benson – court Assistant.

Mr. Kihiko and Mr Ochieng' for the Plaintiff.

Mr. Waweru Gatonye SC and Rono Kibet for the 1st and 2nd Defendants.

Mr. C N Menge [Deputy Litigation counsel] for the 3rd and 4th Defendants.

Mr. Alphonse Mutinda for the 5th Defendant.

