



**Ali & 3 others v Mohamed & 5 others (Petition E010 of 2023)  
[2024] KEELC 14066 (KLR) (18 December 2024) (Judgment)**

Neutral citation: [2024] KEELC 14066 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MALINDI  
PETITION E010 OF 2023  
EK MAKORI, J  
DECEMBER 18, 2024**

**BETWEEN**

**ALI HAIDAR ALI ..... 1<sup>ST</sup> PETITIONER  
GILBERT K N KITUR ..... 2<sup>ND</sup> PETITIONER  
MOHAMED QAIS ABUBAKAR ..... 3<sup>RD</sup> PETITIONER  
ABDUREHMAN ALI ABDUREHMAN ..... 4<sup>TH</sup> PETITIONER**

**AND**

**FARHIYA SHEIKH MOHAMED ..... 1<sup>ST</sup> RESPONDENT  
ANWAR SHEIKH SAID ABDALLA ..... 2<sup>ND</sup> RESPONDENT  
GOODSON NINE LIMITED ..... 3<sup>RD</sup> RESPONDENT  
TOM M NYANGAU ..... 4<sup>TH</sup> RESPONDENT  
LAND REGISTRAR, LAMU ..... 5<sup>TH</sup> RESPONDENT  
THE HON ATTORNEY GENERAL ..... 6<sup>TH</sup> RESPONDENT**

**JUDGMENT**

1. Parcel Nos. Manda Island/380 and Parcel Nos. Manda Island/381 are the contentions in this petition. All were allegedly allocated to the Petitioners, who accepted the offer and made the requisite payment, and official receipts were issued. On or about 26<sup>th</sup> October 2020, a new grant survey was carried out, which resulted in the registration of Manda Island/380 and Manda Island/381. A Registry Index Map (RIM) was forwarded to the Director of Land Administration. The said survey resulted in the amendment of the RIM to reflect the parties.



2. The State Department of Land and Physical Planning initiated the process of preparing leases for the said parcels. The leases were subsequently registered in favour of the 1st and 2nd Respondents. Lamu/Manda/380 was registered in favour of the 1st Respondent, while lease documents for Lamu/Manda/Island/381 had been registered in favour of the 2<sup>nd</sup> Respondent.
3. On or about 11<sup>th</sup> August 2021, transfer documents for both leases were lodged at the Lamu Registry and formalized in favour of the 3rd Respondent at a consideration of Kshs 5,000,000/—for each land parcel.
4. A caution was lodged. A hearing on the caution proceedings could not occur because the Land Registrar was considered biased. At the hearing regarding the withdrawal of the caution, the Lamu Land Registrar summoned parties to address the dispute surrounding the land parcels. However, the Petitioners withdrew, citing bias on the part of the official, hence this petition.
5. The petition significantly seeks the following reliefs:
  - a. An order directing the cancellation of Title Deeds issued erroneously to the 1<sup>st</sup> and 2<sup>nd</sup> Respondents.
  - b. A declaration that the subsequent transfers of the suit properties to the 3<sup>rd</sup> Respondent are void ab initio.
  - c. An order compelling the Land Registrar to register the Titles for the suit properties in favour of the Petitioners.
  - d. Costs of this petition.
  - e. Any other orders the court may deem fit.
6. By consent of the parties, the 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, and 6<sup>th</sup> Respondents relied on their respective affidavits, while the Petitioner and the 1<sup>st</sup> and 2<sup>nd</sup> Respondents called witnesses to the stand. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents filed a Replying Affidavit sworn by Anwar Sheikh Said Abdalla on 17<sup>th</sup> June 2023 and a Further Affidavit dated 19<sup>th</sup> July 2023 in response to the petition. The 3<sup>rd</sup> Respondent opposed the petition with a Replying Affidavit sworn by Mwaura Kabata on 6<sup>th</sup> November 2023, while the 4<sup>th</sup>, 5<sup>th</sup>, and 6<sup>th</sup> Respondents opposed the petition through a Replying Affidavit sworn by Tom M. Nyangau on 18<sup>th</sup> July 2023.
7. the court ultimately directed parties to file written submissions. After carefully considering the materials placed before me, the core issue that this court must determine is whether the Petitioners have proved their case to warrant the reliefs sought. Put it this way: Who is the rightful proprietor of the suit properties? I will also address the issue of costs.
8. The Petitioners' evidence is that the Letters of Allotment dated 7<sup>th</sup> July 1998 allocated Lamu Plot No. Manda Island/380 and Lamu Island/381 (the "Suit Properties") to the Petitioners. Upon receipt of the said Letters of Allotment, the Petitioners accepted the offers from the Commissioner of Lands, where they also made the requisite payments and issued official receipts.
9. On 26<sup>th</sup> October 2020, a New Grant Survey was carried out by L.K Gitau, Licensed Land Surveyor, which was authenticated via Authentication Letter CR 265/Vol. 40/78 of 8<sup>th</sup> April 2021, resulting in the registration of Manda Island/380-381. The survey was registered as Computation Number 76590 and the Survey Plan as Folio No. 654, Register No. 117. A sealed Registry Index Map was forwarded to the Director of Land Administration via letter CR 265/VOL 40/116 of 4<sup>th</sup> June 2021.



10. The allottees of these parcels were as follows- Parcel A (Manda Island/380)- Gilbert K. N Kitur, Ali Haidar Ali and Abdurehman Ali Abdurehman.Parcel B (Manda Island/381)- Ali Haidar Ali & Mohamed Qais Abubakar. Thereafter, the Ministry of Lands and Physical Planning initiated the process of preparing leases for the said parcels, which were later forwarded to the District County Land Registrar—Lamu for registration purposes.
11. The Petitioners were shocked to learn later that fraudulent leases over the same parcels had been mischievously and irregularly registered at the Lamu Land Registry, although these fraudulent leases were not accompanied by the necessary Registry Index Maps (RIMs), which are mandatory during registration.
12. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents are a couple. Their case is that the suit properties were allotted to them through letters of allotment dated 9<sup>th</sup> July 1998 in the names of Anwar Sheikh Said Abdalla and Farhiya Sheikh Mohamed. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents complied with the terms of the allotment and were registered as the owners of the suit properties on 21st June 2021. Thereafter, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents sold and transferred the properties to Goodison Nine Limited – 3<sup>rd</sup> Respondent at a consideration of Kshs. 5,000,000/=. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents only learned about the Petitioner's claim upon Goodison Nine Limited, informing them that some persons claimed interests in the suit properties and had registered a caution on them. Upon perusing the documents filed by the Petitioners, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents noted the following facts - The letter of allotment dated 7<sup>th</sup> July 1998 is fraudulent, null, and void. The court cannot, therefore, be used to enforce an illegal allotment. The National Director of Physical Planning confirmed through a letter dated 7<sup>th</sup> February 2021 that the drawing styled as PDP Ref. LMU. 609.IX.22.97, which formed the basis of the alleged leases issued to the Petitioners by the PN. Mutwiwa, was not authentic.
13. The 4<sup>th</sup>, 5<sup>th</sup>, and 6<sup>th</sup> Respondents' case is that Lease documents for Parcel Number Lamu Manda Island/380 were forwarded to the office of the Land Registrar, Lamu, in favour of Farhiya Sheikh Mohamed. The proprietor duly executed them, registered them at the Land Registry on 21<sup>st</sup> June 2021, and issued a relevant certificate of lease.
14. On 11<sup>th</sup> August 2021, duly franked transfer documents were lodged at the land registry, and the same was formalized in favor of Goodison Nine Limited at a consideration of Five Million Kenya Shillings (Kshs. 5,000,000/=). A certificate of lease was issued on the same date.
15. On 15<sup>th</sup> March 2022, a caution was registered in favor of Ali Haidar Ali, claiming ownership interest. However, vide letter dated 15<sup>th</sup> November 2022, other lease documents were forwarded to the Lamu Land Registry in favor of Ali Haidar Ali, Abdurehman Ali Abdurehman, and Gilbert Kiptoo Kitur, but the Land Registrar declined to register, having already registered the leases in favor of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents.
16. The lease for parcel number Lamu Manda Island/381 was forwarded to the Lamu Land Registrar via a letter dated 17<sup>th</sup> June 2022. The lease documents were in favor of Anwar Sheikh Said Abdalla. The proprietor duly executed the lease documents, registered them at the land registry on 21<sup>st</sup> June 2021, and issued a relevant lease certificate.
17. On 11<sup>th</sup> August 2021, duly franked documents were lodged at the land registry, and the same was formalized in favor of Goodison Nine Limited at a consideration of Five Million Kenya Shillings (Kshs. 5,000,000/=). A certificate of lease was issued on the same date.
18. On 15<sup>th</sup> March 2022, a caution was registered in favor of Ali Haidar Ali, claiming ownership interest. However, other lease documents were forwarded to the Lamu Land Registry via a letter dated 7<sup>th</sup>



November 2022. The lease documents were prepared in favor of Ali Haidar Ali and Mohamed Qais Abubaker. Still, the Land Registrar declined to register them, having already registered the leases in favor of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents.

19. Mr Kibunja learned counsel for the Petitioners submitted that the petitioners have put a case to warrant the reliefs sought. He significantly cited various authorities to support his averment. He noted the decision in *Daudi Kiptugen v Commissioner of Lands Nairobi Lands & 4 others* [2015] eKLR, highlighting the acquisition process of a regular and lawful lease following due processes. In keeping with the sentiments of the above authority, a succinct explanation of how the Petitioners' ownership rights over the suit properties came into being is offered in a Letter dated 6th June 2022 from the Director of Survey on the State Department of Lands and Physical Planning. The letter details that land parcels Lamu/Manda Island/380-381 resulted from the New Grant Survey done by L.K. Gitau, a Licensed Land Surveyor. The survey was registered as Computations Number 76590 and the Survey Plan as Folio No. 654, Register No. 117. This survey was authenticated on 9<sup>th</sup> April 2021, and a sealed Registry Index Map was forwarded to the Director of Land Administration vide letter CR 265/VOL.40/116 of 4<sup>th</sup> June 2021.
20. The allottees for the above parcels were as follows: Parcel A (Manda Island/380) – Gilbert K.N. Kitur, Ali Haidar Ali and Abdurehman Ali Abdurehman all of P.O. Box 74, Lamu. Parcel B (Manda Island/381) – Ali Haidar Ali and Mohamed Qais Abubakar all of P.O. Box 74, Lamu.
21. He further averred that the Petitioners have presented this court with the following evidence regarding the chain of documents leading to their ownership of the suit properties:
  - a. Letters of Allotment upon which the above survey was premised.
  - b. Evidence of the New Grant Survey and its authentication.
  - c. Evidence of the Lease Document for Lamu/Manda Island/380 in favor of the Petitioners.
  - d. Evidence of Rent Clearance and other Lamu/Manda Island/380 documentation.
  - e. Evidence of Lease Documents for Lamu/Manda Island/381 in favor of the Petitioners.
  - f. Evidence of Rent Clearance and other Lamu/Manda Island/381 documentation.
22. Mr. Kibunja contends that the above evidence tendered to this court portrays the legality of the Petitioners' ownership of the suit properties and provides a precise and chronological description of how such ownership was obtained. Further evidence of the Petitioners' ownership is provided in an Internal Memo dated 8<sup>th</sup> December 2022 from the Deputy Director of Land Administration to the Director of Land Administration in which the Deputy Director addresses the dispute surrounding the suit properties.
23. In the above letter dated 8<sup>th</sup> December 2022, the Deputy Director of Land Administration holds the position that the survey and amended Registry Index Map (RIM) for Lamu/Manda Island/380-381 were done in favor of the Petitioners herein and the 1st Petitioner collected the RIM in June 2021 and the leases were pending registration by the District Land Registrar, Lamu. In addition to the above, the Deputy Director of Land Administration expressly states that the registration of Lease documents done on 21<sup>st</sup> June 2021 in favor of the 1st and 2nd Respondents herein was not supported by authentic amended RIM as confirmed by the Director of Surveys. Moreover, the Deputy Director stated that it appeared that the survey and the amended RIM for the plots were hijacked and presented to defraud, given that the transfer of the plots was later done only two months after registration.



24. In the same letter dated 8<sup>th</sup> December 2022, the Deputy Director of Land Administration further recommended that:
- “(iii) The District Land Registrar be requested to expunge from registry records the two leases registered on 21<sup>st</sup> June 2021 thus effectively cancelling the registration of leases.
  - (iv) The District Land Registrar thereafter to process the registration of the leases forwarded for registration vide letters reference Nos. 257718 T.C. dated 15/11/2022 and 323409 dated 7<sup>th</sup> November 2022 for Manda Island Parcel Nos. 380 and 381, respectively.”
25. Following the above, the Director of Land Administration wrote a Letter dated 16<sup>th</sup> December 2022 addressed to the County Land Registrar, Lamu, in which, as a result of further investigation, the Director expressly stated, inter alia:
- 1. That the Registration done on 21<sup>st</sup> June 2021 were not supported by authentic amended Registry Index Map (RIM) as confirmed by the Director of Surveys.
  - 2. That it appears the survey and the amended Registry index Map (RIM) for the plots was hijacked and presented with the intention by those who procured registration of leases on 21<sup>st</sup> June 2021 to defraud given that transfer of the plots was done two months later as per entry No. 3.
  - 3. ...
  - 4. That the survey and original authentic amended Registry Index Map (RIM) were done and released to the allottees whose leases are pending registration.
26. In the same letter dated 16<sup>th</sup> December 2022, the Director of Land Administration gave the following recommendations, inter alia, to the County Land Registrar, Lamu:
- i. ...
  - ii. ...
  - iii. ...
  - iv. Expunge from the Registry Records the two leases registered on 21<sup>st</sup> June 2021 thus effectively cancelling the Registration of leases.
  - v. Thereafter process the registration of the leases that are pending forwarded vide letters reference Nos. 257718 T.C. dated 15/11/2022 and 323409 dated 7<sup>th</sup> November 2022 for Manda Island Parcel Nos. 380 and 381 respectively.
27. That Despite receiving a clear way forward from the Director of Land Administration, Mr. Kibunja asserts that the 4<sup>th</sup> Respondent, who is a Land Registration Officer of the 5<sup>th</sup> Respondent, conducted himself with such extreme bias that he effectively forced the Petitioners to withdraw from the Caution hearing and instead institute the present Petition.
28. The above proves the legitimacy of the Petitioners’ ownership of the suit properties. The State Department of Lands and Physical Planning repeatedly acknowledged this.



29. Mr Kibunja contends that throughout the hearing of this suit, the 1<sup>st</sup> Respondent did not adduce any evidence in Court to prove the validity of the Title obtained for Lamu/Manda Island/380. The 1<sup>st</sup> Respondent failed to justify her non-attendance during the hearing, and neither did she authorize the 2<sup>nd</sup> Respondent to plead on her behalf as per Order 1 Rule 13 of the Civil Procedure Rules.
30. He submits that in *Munyu Maina v Hiram Gathiha Maina* [2013] eKLR, the Court of Appeal stated that:
- “Under Section 112 of the *Evidence Act*, when any fact is especially within the knowledge of any party to those proceedings, the burden of proving or disproving that fact is upon him. How the respondent acquired title to the suit property is a fact within the personal knowledge of the respondent...”
31. He states that in the present case, by failing to attend the hearing and simply relying on the pleadings, the 1<sup>st</sup> Respondent effectively failed to prove that she legally and procedurally obtained the Title of Lamu/Manda Island/380 and further failed to rebut the testimony of the Petitioners given during the hearing with her own. On the other hand, the Petitioners have satisfied the provisions of Sections 107 and 116 of the *Evidence Act*, which essentially places the burden of proof on the Petitioners to prove the illegitimacy of the Titles obtained by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents; the Petitioners have not only proved the validity of their Title but also proved the illegality of the Titles fraudulently obtained by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents.
32. Concerning the validity of the Title obtained by the 1<sup>st</sup> Respondent for Lamu/Manda Island/380, Mr. Kibunja still cites the Court of Appeal in the case of *Munyu Maina v Hiram Gathiha Maina* (supra) holding that:
- “We state that when a registered proprietor’s root of title is under challenge, it is not sufficient to dangle the instrument of title as proof of ownership. It is this instrument of title that is in challenge and the registered proprietor must go beyond the instrument and prove the legality of how he acquired the title and show that the acquisition was legal, formal and free from any encumbrances including any and all interests which need not be noted on the register.”
33. An examination of the pleadings entered by the 1<sup>st</sup> Respondent reveals that the only documentation relied on to prove a valid Title was a fraudulent Lease dated 11<sup>th</sup> June 2021 and registered on 21<sup>st</sup> June 2021 and an alleged Letter of Allotment.
34. The 1<sup>st</sup> Respondent presented no evidence of documentation proving the root of her alleged Title. There was no evidence of compliance with the terms of the Letter of Allotment, no evidence of a survey carried out premised on the Letter of Allotment, no evidence of an Amended Registry Index Map following the carrying out of a survey, no evidence of collection of the Lease documents and no evidence of a Rent Clearance Certificate prerequisite to the issuance of a Lease.
35. It is averred that in contrast to the detailed evidence tendered by the Petitioners showing chronological documentation surrounding obtaining Title, the 1<sup>st</sup> Respondent seems to be of the position that since she held Title, the same can be deemed adequate and proper. In the above-mentioned matter of *Daudi Kiptugen v Commissioner of Lands Nairobi Lands & 4 others* (supra), the Court further held that:
- “*The Constitution* of Kenya, 2010, at Article 40 (6), provides that a title that has been unlawfully acquired cannot be protected. This is echoed at Section 26 of the *Land*



Registration Act.....title can be challenged by virtue of the provisions of Section 26 (1) (a) and (b). Under Section 26 (1) (a) title can be challenged if obtained by fraud or misrepresentation to which the person is proved to be a party. Under Section 26 (1) (b), it needs to be demonstrated that the title has been acquired illegally, unprocedurally, or through a corrupt scheme. On the latter, the title holder doesn't need to be guilty of any misfeasance; he may be an innocent party, but so long as the title is not procured legally, or procedurally, or through a corrupt scheme, the title is still impeachable.”

36. It is stated for the Petitioners that the illegitimacy of the Title obtained by the 1<sup>st</sup> Respondent over Lamu/Manda Island/380 is further proved by the fact that the Director of Land Administration expressly recommended that the Lease registered in favor of the 1<sup>st</sup> Respondent be expunged from the records of the Lamu Lands Registry. Instead, the pending Leases in favor of the Petitioners be rightfully registered, as detailed above. The actuality of the situation is that as commented by the Director of Land Administration above, the Lease for Lamu/Manda Island/380 registered on 21<sup>st</sup> June 2021 in favor of the 1<sup>st</sup> Respondent is the result of a fraudulent scheme orchestrated by the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents with the aim of defrauding the Petitioners of their Title and to ultimately enrich themselves by selling the same to the 3<sup>rd</sup> Respondent.
37. About the validity of the Title for Lamu/Manda Island/381, Mr. Kibunja submits that the Supreme Court in *Dina Management Limited v County Government of Mombasa & 5 others* (Petition 8 (E010) of 2021) [2023] KESC 30 (KLR) cited with approval the case of *Munyu Maina v Hiram Gathiha Maina* (supra), stating that:

“As held by the Court of Appeal in *Munyu Maina v Hiram Gathiha Maina* Civil Appeal No 239 of 2009 [2013] eKLR, where the registered proprietor’s root title is under challenge, it is not enough to dangle the instrument of title as proof of ownership. It is the instrument that is in challenge and therefore the registered proprietor must go beyond the instrument and prove the legality of the title and show that the acquisition was legal, formal and free from any encumbrance including interests which would not be noted in the register.”
38. Mr. Kibunja contends that in keeping with the above sentiment, an analysis of the evidence tendered by the 2<sup>nd</sup> Respondent surrounding the root of the title for Lamu/Manda Island/381 reveals the same to be substantially lacking. In his testimony during the Hearing on 11<sup>th</sup> April 2024, the 2<sup>nd</sup> Respondent tendered evidence of Lamu/Manda Island/381 ownership, including a fraudulent Lease dated 11<sup>th</sup> June 2021 registered on 21<sup>st</sup> June 2021 and an alleged Letter of Allotment. The 2<sup>nd</sup> Respondent testified that he applied for allocation of Lamu/Manda Island/381; however, he failed to provide evidence of such an application. Furthermore, he did not present any Letter of Acceptance concerning the land plot or evidence of payment of the prerequisite fees for allocation.
39. The 2<sup>nd</sup> Respondent further failed to give evidence of any survey done on Lamu/Manda Island/381 or provide the court with a copy of the Registry Index Map (RIM) reflecting the study carried out on the land that would have been precursory to the obtaining Lease Documents over the said parcel.
40. As detailed above, The Director of Land Administration repeatedly noted the glaring lack of evidence of a survey or an amended Registry Index Map. In addition to the above, despite testifying that he had possessed proper Title over Lamu/Manda Island/381, the 2<sup>nd</sup> Respondent failed to present any documentation to support his assertion, such as a Rent Clearance Certificate or receipts evidencing payment of the prerequisite fees to obtaining such Title.



41. The Petitioners contend that, as illustrated, the shallow documentary evidence offered by the 2<sup>nd</sup> Respondent starkly contrasts the detailed documentation presented by the Petitioners. The illegitimacy of the Title obtained by the 2<sup>nd</sup> Respondent over Lamu/Manda Island/381 is further proved by the fact that the Director of Land Administration expressly recommended that the Lease registered in favor of the 2<sup>nd</sup> Respondent be expunged from the records of the Lamu Lands Registry. Instead, the pending Leases in favor of the Petitioners be rightfully registered, as detailed above.
42. The petitioners are of the view that the validity of the Titles currently held by the 3<sup>rd</sup> Respondent for Lamu/Manda Island/380 – 381, a perusal of the 3<sup>rd</sup> Respondent’s pleadings shows that the taken position is that the 3<sup>rd</sup> Respondent is a bona fide purchaser that undertook due diligence before purchasing the suit properties and is not privy to the complaints made by the Petitioners.
43. Mr. Kibunja cites the decision in *Dina Management Limited v County Government of Mombasa & 5 others* where the apex Court held:
- “To establish whether the appellant is a bona fide purchaser for value therefore, we must first go to the root of the title, right from the first allotment, as this is the bone of contention in this matter.....Indeed, the title or lease is an end product of a process. If the process that was followed prior to issuance of the title did not comply with the law, then such a title cannot be held as indefeasible.... Article 40 of *the Constitution* entitles every person to the right to property, subject to the limitations set out therein. Article 40(6) limits the rights as not extending them to any property that has been found to have been unlawfully acquired. Having found that the 1<sup>st</sup> registered owner did not acquire title regularly, the ownership of the suit property by the appellant thereafter cannot therefore be protected under article 40 of *the Constitution*. The root of the title having been challenged, as we already noted above the appellant could not benefit from the doctrine of bona fide purchaser.”
44. Further clarification on the position of a bona fide concerning illegally obtained Title can be found in the aforementioned case of *Daudi Kiptugen v Commissioner of Lands Nairobi Lands & 4 others* (supra), where while determining the issue of an illegal or corrupt scheme, it was stated as follows:
- “On this point, it does not have to be proved that the plaintiff was a party to the illegality, lack of proper procedure or corruption... I have no evidence that there was any corrupt dealings, but at the very least, there was a procedural impropriety that led to the Lease being issued to the plaintiff... It is therefore my opinion, that the title of the plaintiff is impeachable by dint of both Section 26 (1) (a) and Section 26 (1) (b).”
45. In the present case, the Petitioners believe not only were the Titles for Lamu/Manda Island/380 – 381 illegally acquired as a result of a corrupt scheme, but the subsequent Transfer of the same to the 3<sup>rd</sup> Respondent was highly unprocedural and further evidence of fraud. The Director of Land Administration also held this sentiment. Scrutinization into the presented documentation surrounding the illegal Transfers to the 3<sup>rd</sup> Respondent divulges that mandatory documents did not accompany the said Transfers, including a Rent Clearance Certificate, Stamp Duty Payment Receipts, Valuation Forms from a Government Valuer, and Bank Deposit Slips for payment of Stamp Duty. In addition to the above, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents are under investigation by the Directorate of Criminal Investigations (DCI), Lamu, over forgery of Stamp Duty franking machine impressions, which was done to expedite the Transfer of the suit properties to the 3<sup>rd</sup> Respondent, the same having taken place only two months since the 1<sup>st</sup> and 2<sup>nd</sup> Respondents illegally obtained Titles over these properties.



46. The 3<sup>rd</sup> Respondent has been content to shield itself with the provisions of Article 40 of *the Constitution* and Section 26 of the *Land Registration Act*, hoping that this alone will be enough to convince this court that its existing Title must be protected. However, Article 40 (6) of *the Constitution*, read together with Section 26 (2) of the *Land Registration Act*, provides an exception through which the 3<sup>rd</sup> Respondent's Titles may be challenged.
47. The Petitioners assert that throughout the existence of this matter, the position held by the 4<sup>th</sup> and 5<sup>th</sup> Respondents has simply been to wring their hands at the situation without offering any form of clarity on how two sets of Lease documents were registered over the same parcels of land. A perusal of the documents annexed to the 4<sup>th</sup> Respondent's Replying Affidavit dated 18<sup>th</sup> July 2023 shows that it is the 4<sup>th</sup> Respondent himself that registered the Transfers of Lamu/Manda Island/380 – 381 from the 1<sup>st</sup> and 2<sup>nd</sup> Respondents to the 3<sup>rd</sup> Respondent. Yet, despite this fact, the 4<sup>th</sup> Respondent was never called upon by this Court to shed some light on these issues.
48. The Petitioners are of the view that the seemingly innocent reluctance of the 4<sup>th</sup> Respondent in carrying out his duty as an officer of the 5<sup>th</sup> Respondent seems to be a recurring theme, as evidence of this can be seen in *Haji v Attorney General & 4 others; Athman & another (Interested Parties)* [2024] KEELC 457 (KLR), where when presiding on a similar issue involving two sets of Title recorded in the Lamu Registry, this Court expressed its frustration with the Lamu Land Registrar as follows:
- “...Mr Tom Nyangau the Register of Land Lamu was of little assistance to this Court... Instead he seemed to shrug his arms...All this mess could have been avoided if our Land Registries had genuine, verifiable and timely entries in the register reflecting and mirroring dealings in land held on our behalf.”
49. The Petitioners are of the view that the most significant difference between the situation facing the Lamu Land Registrar in the above matter and the present suit is that in the present one, the 4<sup>th</sup> and 5<sup>th</sup> Respondents received clear and precise directives from the Director of Land Administration on how to handle the dispute surrounding the Titles for Lamu/Manda Island/380 – 381. This has been thoroughly detailed and illustrated above vide Internal Memo dated 8<sup>th</sup> December 2022 from the Deputy Director of Land Administration to the Director of Land Administration; the latter refers explicitly to a Letter dated 28<sup>th</sup> November 2022 in which the District Land Registrar, Lamu has written back indicating that the pending Leases in favor of the Petitioner cannot be registered as there are already existing Leases in favor of the 1<sup>st</sup> and 2<sup>nd</sup> Respondent registered on 21<sup>st</sup> June 2021. This letter dated 28<sup>th</sup> November 2022 from the District Land Registrar, Lamu, sparked an investigation by the State Department for Lands and Physical Planning into the Titles of the two land parcels, ultimately revealing the fraudulent scheme that was orchestrated. Only after this investigation does the Director of Land Administration write to the 5<sup>th</sup> Respondent that the fraudulent Leases be expunged and the register rectified.
50. Petitioners submit that despite the above directive, the 5<sup>th</sup> Respondent took no action in compliance and instead seems to sit back and allow the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> Respondents to continue benefitting from their fraudulent scheme. The Letter dated 28<sup>th</sup> November 2022 requesting advice from the Director of Land Administration was written and signed by the 4<sup>th</sup> Respondent herein. Despite receiving said advice, the 4<sup>th</sup> Respondent ignored the same entirely and has not offered this Court any substantial reason for doing so. Instead, the 4<sup>th</sup> Respondent takes a blatantly bias position in his pleadings and insists that the Leases and subsequent Transfers orchestrated by the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> Defendants were all legal and carried out procedurally. The above actions by the 4<sup>th</sup> Respondent prove his complacency



in the face of the fraudulent scheme against the Petitioners and implicate him as a co-conspirator who abused his position of power as an officer of the 5<sup>th</sup> Respondent to facilitate illegality and prejudice.

51. Mr. Kibunja concludes that from all the above, it is pretty clear that a great injustice has been occasioned on the Petitioners at the hands of the 1<sup>st</sup> to 5<sup>th</sup> Respondents. The latter have almost gleefully enriched themselves by abusing the Petitioners' rights as enshrined under Article 40 of *the Constitution*.

52. Mr. Mwanzia, for the 1st and 2nd Respondents, submits that the basis of the petition is that Lamu Plot No. Manda Island/380 and Manda Island/381 were allocated to the Petitioners through Letters of Allotment dated 7<sup>th</sup> July 1998. However, the Letter of Allotment dated 7<sup>th</sup> July 1998 was issued to Ali Haidar Ali and Mohamed Qais Abubakar when they were 7 and 6 years old, respectively.

53. He believes that the law is that a minor can only own property through a trustee – see the *Public Trustee Act*. Section 27 of the *Land Act* No. 6 of 2012 sets out the obligations of minors registered with land in the following words:

“27. A child shall be capable of holding title to land through a trustee and such child shall be in the same position as an adult with regard to the child's liability and litigations to the land.”

54. Even though the Petitioners testified to their case, during cross-examination, to wit, that their father registered the land in trust for them, that evidence falls short of the Parole Evidence Rule.

55. Mr. Mwanzia contends in the book by Treitel entitled 'The Law of Contract' the learned author discussed the parol evidence rule as follows:

“The parol evidence rule states that evidence cannot be admitted (or, even if admitted, cannot be used) to add to, vary, or contradict a written instrument. In relation to contracts, the rule means that, where a contract has been reduced to writing, neither party can rely on extrinsic evidence of terms alleged to have been agreed, i.e., on evidence not contained in the document. Although the rule is generally stated as applying to parol evidence, it applies just as much to other forms of extrinsic evidence. Of course, if a contractual document incorporates another document by reference, evidence of the second document is admissible, but the rule prevents a party from relying on evidence that is extrinsic to both documents.”

56. Mr. Mwanzia states that the Petitioners are forbidden by the parol rule from introducing verbal representation as they did in cross-examination to alter the written and signed Letter of Allotment. The Letter of Allotment does not state that the property was allotted to the Petitioner's father in trust for them. This was also the case in *Muthuuri v. National Industrial Credit Bank Ltd* [2003] KLR 145, where the court held as follows:

- “1. The history preceding the execution of a contract and any discussions or assurances in that regard are superseded by the subsequent written contract which becomes the exclusive memorial of the parties agreement.
2. No extrinsic evidence is admissible to contradict, vary, add to, or subtract from the terms of the document.”

57. Mr. Mwanzia submits that the Letters of Allotment tendered by the Petitioners in support of their claim are fraudulent, having been issued when they were 7 years and 6 years, respectively. Further, even if one were to turn a blind eye to the anomaly surrounding the age of the Petitioners when the Letters



of Allotment were issued, the Petitioners admitted that the terms of the letter of allotment dated 7<sup>th</sup> July 1998 required them to fulfill certain obligations within 30 days (this is expressly stated in the letter of allotment). Mr. Ali Haidar conceded in cross-examination that he did not accept and comply with the conditions set in the letter of allotment within 30 days. If anything, no evidence was produced in court to demonstrate that the conditions set in the allotment letter were strictly complied with.

58. Having failed to comply with the conditions set out in the allotment letter, the letter of allotment lapsed and/or was a nullity. Reliance is placed on the case of *Bubaki Investment Company Ltd v. National Land Commission & 2 others* [2015] eKLR, where the court held that:

“where the petitioner did not comply with the terms and conditions of the letter of allotment dated 30<sup>th</sup> May 1997 and that as at the time the petitioner made payment of the charges stipulated under the letter of allotment the offer had lapsed and was therefore in ineffectual and that the offer extended through the letter of allotment having lapsed by effluxion of time, there was no offer to accept at the time the petitioner made the payment.”

59. Further, in *Dr. Joseph N.K. Arap Ng'ok v Justice Moiyo Ole Keiyua & 4 others* [1997] eKLR, the Court of Appeal held as follows:

“It has been held severally that a letter of allotment per se is nothing but an invitation to treat. It does not constitute a contract between the offerer and the offeree and does not confer an interest in land at all. It cannot thus be used to defeat a title of a person who is the registered proprietor of the said parcel of land.” The offer given to the Petitioners as per the Letters of Allotment dated 7<sup>th</sup> July 1998 automatically lapsed on 8<sup>th</sup> July 1998 when the Petitioners failed to comply with the terms of the offer.”

60. For an allotment letter to become operative, Mr. Mwanzia states that the allottee must comply with the conditions in the allotment letter, including paying stand premium and ground rent within the prescribed period. See the decision in *Mbau Saw Mills Ltd v Attorney General for and on behalf of the Commissioner of Lands) & 2 others* [2014] eKLR.

61. Flowing from above, it is submitted that as the Petitioners did not demonstrate compliance with the conditions in the letter of allotment dated 7<sup>th</sup> July 1998, it follows that they did not acquire any interest flowing from the said letter of allotment. The petition, therefore, fails.

62. Mr. Mwanzia avers that all the decisions relied on deal with a scenario where two or three titles are registered, and the court has to go through the root of each title to determine which one is genuine. That is not the case herein. We have only one set of leases duly registered.

63. Further, the Petitioner's case is that they are the original allottees who should be registered as owners of the suit properties. According to the provisions of Sections 107, 108 & 109 of the *Evidence Act*, the burden of proof lies on a person who is bound to prove the existence of any fact and who wishes the Court to believe in its existence and the event no evidence is given on either side, such person is bound to fail. The Petitioners, therefore, had the burden of proving their case.

64. The Supreme 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....”.



65. The Petitioners cannot shift the burden to prove their claim to the 1<sup>st</sup> and 2<sup>nd</sup> Respondents when they fail to provide credible evidence to support their case. See the decision made in *Charterhouse Bank Limited (Under Statutory Management v Frank N. Kamau [2016] eKLR)*, where the court had to pronounce itself on the plaintiff's burden of proof where the Defendant failed to adduce evidence. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents believe that this is a case where the Respondents did not testify or adduce any evidence, the petition would still not succeed, bearing in mind the admission by the Petitioners that they did not comply with the terms of the letters of allotment.
66. Whether the Petitioners have tabled any evidence to challenge the title of the suit properties as currently registered, Mr. Mwanzia states that subject to the provisions of Section 26 of the [Land Registration Act](#):
- “The certificate of title issued by the registrar upon registration, or to a purchaser of the land upon a transfer or transmission be the proprietor shall be taken by all court as prima facie evidence that the person named as proprietor of the land is the absolute indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except
- (a) On the grounds of fraud or misrepresentation to which the person proved to be a party;
- (b) Where the certificate of title has been acquired illegally unprocedurally or through a corrupt scheme.”
67. The provisions of Section 26 of the [Land Registration Act](#) should be read with the presumption of regularity in mind. The presumption was restated by the Court of Appeal in *Kibos Distillers Limited & 4 others v Benson Ambuti Adegga & 3 others [2020] eKLR*, where the court held that there is a presumption of regularity in law. Under this presumption, a court presumes that official duties have been properly discharged and all procedures duly followed until the challenger presents clear evidence to the contrary. (See *Archbold Criminal Pleading, Evidence and Practice*, 1999, p. 1130, heading “B” to paras. 10-4 and 10-5; see also *Patrick Ayisi Ingoi v Republic [2018] eKLR*). In *Chief Land Registrar & 4 others v Nathan Tirop Koech & 4 others [2018] eKLR*, it was stated that there is a presumption that all acts done by a public official have lawfully been done and that all procedures have been duly followed. Regularity presumes that executive officials have properly discharged their official duties. The presumption is aptly captured in the ancient Latin maxim “*Omnia praesumuntur rite esse acta*,” which roughly translated means “All things are presumed to have been done rightly.”
68. Mr. Mwanzia states that the law will, therefore, not require the registered owner of a property to table any evidence until credible evidence has been presented that demonstrates fraud or illegality, thereby impeding the presumption of regularity. The Petitioners have demonstrated a very weak case that would not even entitle a response from the Respondents. The basis upon which the Petitioners are claiming their interest is flawed. This reminds us of the holding in *Macfoy v United Africa Co. Ltd [1961] 3 All E.R. 1169*, where Lord Denning dealt with the effect of any act which is a nullity, which can never avail anything, for a nullity begets a nullity.
69. Mr. Mwanzia asserts that, as demonstrated by the Letters of Allotment relied upon by the Petitioners, the entire claim anchored on the said letters of allotment is a nullity. The petition dated 30<sup>th</sup> March 2023 is unmerited and should be dismissed with costs.
70. This petition is reminiscent of another petition this Court handled involving the same counsels, emanating from the Lamu Land Registry; it is reported as *Haji v Attorney General & 4 others; Athman & another (Interested Parties) [2024] KEELC 457 (KLR)* (*supra*). Mr. Kibunja referred to it. Mr.



Mwanzia and Mr. Cohen were in it. This Court delved into details on the Torrens System and how the land registries are failing Kenyans. There is a dereliction in keeping accurate records that reflect the precise entries and dispositions that mirror the title:

“Ideally, this Court – the ELC would not be dealing with fraudulent transactions, double allocations, or obtaining titles through dishonest means if the Torrens System was correctly operating in this Country and everything was presumed to be in the status as submitted by Mr. Mwanzia for the petitioner, holding all factors “Omnia praesumuntur rite esse acta” – (all acts are presumed to have been done rightly and regularly). The ELC will close its doors, and we will not grow weary, but rather, we will sprout wings, ready to soar to heaven as inspired by Isaiah 40.31:

“But those who hope in the Lord will renew their strength. They will soar on wings like eagles; they will run and not grow weary; they will walk and not be faint.”

71. The Court further proceeded to state:

“The Torrens title system works based on title registration, which confers the high indefeasibility of registered ownership. The approach eliminates the requirement to demonstrate a chain of titles, which involves tracking titles through a sequence of documents backward in time. For example, to buy land, one would simply be required to visit the Land Registry, search for the most current registered owner, make the purchase, have the land register transferred and registered in one’s favour, and then use it as necessary. But the reality is our registration system does not reflect what is obtained on the ground, which is why this system isn’t functioning well for us. There are instances when the registration of interests’ sequencing is off-mark. Double registrations, fraudulent acquisitions, corrupt and underhand deals, etc., have led to so many lawsuits - around what is now commonly referred to as ‘due diligence and tracing the root of the title’ - the daily bread for the ELC. Decisions like *Wainaina v Kiguru & another* (Environment & Land Case E023 of 2021) [2022] KEELC 3261 (KLR) (28 July 2022) (Judgment) have been coined:

“It is trite that when a person’s title is questioned, the proprietor must show the root of his ownership. In the case of *Hebert L Martin & 2 others v Margaret J Kamar & 5 others* [2016] the Court held:

“A court, when faced with a case of two or more titles over the same land, has to make an investigation so that it can be discovered which of the two titles should be upheld. This investigation must start at the root of the title and follow all processes and procedures that brought forth the two titles at hand. It follows that the title to be upheld is one that conforms to procedure and can properly trace its root without a break in the chain. The parties to such litigation must always bear in mind that their title is under scrutiny and must demonstrate how they got it, starting with its root. No party should take it for granted that they have a right over the property simply because they have a title deed or Certificate of Lease. The other party also has a similar document, and there is no advantage in hinging one’s case solely on the title document they hold. Every party must show that their title has a good foundation and passed properly to the current title holder.”

22. Further, In the case of *Munyu Maina v Hiram Gathiba Maina, Civil Appeal No 239 of 2009*, the Court of Appeal held that: -



“We have stated that when a registered proprietor root of title is challenged, it is not sufficient to dangle the instrument of title as proof of ownership. It is that instrument of title that is challenged, and the registered proprietor must go beyond the instrument to prove the legality of how he acquired the title to show that the acquisition was legal, formal, and free from any encumbrances, including any and all interests which would not be noted in the register.”

72. In this petition, the Petitioners allege to be entitled as the rightfully registered owners of the suit properties, having complied with everything known in law, the registration was hijacked by the 1st and 2nd Respondent, who were quickly registered and sold the suit properties, to the 3<sup>rd</sup> Respondent. The Petitioners fault the registration of the 1<sup>st</sup> and 2<sup>nd</sup> respondents and subsequent sale to the 3<sup>rd</sup> Respondent; as elaborately stated above, the subsequent Transfer to the 3<sup>rd</sup> Respondent did not adhere to the mandatory processes and conditions for public land acquisition. For example, documents did not accompany the said Transfers, including a Rent Clearance Certificate, Stamp Duty Payment Receipts, Valuation Forms from a Government Valuer, and Bank Deposit Slips for payment of Stamp Duty. In addition to the above, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents are under investigation by the Directorate of Criminal Investigations (DCI), Lamu, over forgery of Stamp Duty franking machine impressions, which allegedly was done to expedite the Transfer of the suit properties to the 3<sup>rd</sup> Respondent, the same having taken place only two months since the 1<sup>st</sup> and 2<sup>nd</sup> Respondents obtained Titles over these properties.
73. The 4th and 5th Respondents have not been helpful. There is no clarification on how two sets of Lease documents were registered over the same parcels of land. A perusal of the documents annexed to the 4th Respondent’s Replying Affidavit dated 18th July 2023 shows that it is the 4th Respondent himself who registered the Transfers of Lamu/Manda Island/380 – 381 from the 1<sup>st</sup> and 2<sup>nd</sup> Respondents to the 3<sup>rd</sup> Respondent. The 4<sup>th</sup> Respondent could not shed some light on these issues.
74. The Respondents, on the other hand, also accuse the petitioners of the same fraud in the acquisition of the allotment letters and failure to adhere to the laid down procedures on the acquisition of land from the government that must comply with the conditions in the allotment letter, including paying stand premium and ground rent within the prescribed period.
75. The Letters of Allotment dated 7<sup>th</sup> July 1998, for Lamu Plot No. Manda Island/380 and Lamu Island/381 were allocated to Ali Haidar Ali and Mohamed Qais Abubakar when they were 7 and 6 years respectively. The law states that a minor can only own property through a trustee - see *Public Trustee Act*. As Mr. Mwanzia submits Section 27 of the *Land Act* No. 6 of 2012 sets out the of minors registered with land in the following words:
- “ 27. A child shall be capable of holding title to land through a trustee and such child shall be in the same position as an adult with regard to the child’s liability and litigations to the land.”
76. The Petitioners testified to their case during cross-examination, stating that their father registered the land in trust for them and that the evidence falls short of the Parole Evidence Rule, as submitted by Mr.Mwanzia. Petitioners did not demonstrate compliance with the conditions in the letter of allotment dated 7<sup>th</sup> July 1998 by promptly paying the requisite fees within 30 days of allocation.
77. At the hearing hereof - significant from the record is that the 4th Respondent acknowledged in his replying affidavit the existence of the two sets of leases. The Director of Land Administration and the



Land Registry Lamu have not resolved the matter by establishing how the same land officials issued the two leases concerning the suit property. He stated as follows:

“THAT our office requested the office of the Director of Land Administration to guide us on the position of their records and advise on the sets of leases that were procedurally prepared by the office for purposes of registration and eventually issuances of certificates of lease for all the above two parcels of land. This would have enabled the County Land Registrar Lamu’s office to correct any anomalies that might have been occasioned by the registration of erroneously prepared leases, if any. The office of Director of Land Administration responded vide letter dated 16<sup>th</sup> December 2022. (Annexed herewith and marked as “TMN 15” are copies of the correspondences).

That the Land Registrar summoned all the interested parties vide letter dated 21<sup>st</sup> December 2022 for a hearing of the removal of the registered cautions. During the said meeting the County Land Registrar tried to initiate an Alternative Dispute Resolution (ADR) mechanism since all the interested parties were either present or represented by their advocates but this did not bear much fruit. (Annexed herewith and marked as “TMN 15” are copies of the correspondences)

That this matter is also being investigated by the office of the Directorate of Criminal Investigation and the investigations are still ongoing.

78. The 5th and 6th Respondents declined to clarify how the Lamu Land Registrar ended up with two lease documents for the same parcel of land. This reluctance was palpable throughout the hearing.
79. Based on the evidence and materials presented to me, can the prayers sought in the petition be granted? The parties’ testimony clearly shows that the root of the title issue is at the centre of this petition. Each party claims ownership of the suit properties. Each party has outmanoeuvred and outsmarted the other on how each obtained the set of leases they have. Each accuses the other of fraud and underhand deals.
80. The precise chain of events leading to the issuance of the two sets of leases is lacking. Better particulars to disclose the incongruent records held by the Director of Land Administration and the Land Registrar Lamu County could not be forthcoming from the 4th Respondent (The Land Registrar Lamu - in person), the Office of the 5th Respondents, and the Honourable the AG the 6<sup>th</sup> Respondents.
81. As we were hearing the matter and as disclosed by the 4th Respondent, investigations were ongoing into how the two sets of leases were procured. As I write this petition, the outcome is unknown by this Court.
82. This being a Constitution Petition, under the *Anarita Karimi v Republic (No.1) (1979) 1 KLR 154* on Constitutional avoidance:

“We would, however, again stress that if a person is seeking redress from the High Court on a matter which involves a reference to *the Constitution*, it is important (if only to ensure that justice is done to his case) that he should set out with a reasonable degree of precision that of which he complains, the provisions said to be infringed, and the manner in which they are alleged to be infringed.”

83. From the discussion above, the current petition and the Respondent’s answers led to the conclusion that a probe via viva voce evidence into the root of the title needs to be carried out to establish who has a better title than the other, given the assertions by the parties. As I have shown, this petition cannot



resolve the two conflicting rights. This is ordinarily achieved in a normal plaint where fraud is pleaded and proved, and each party is called to defend his acquisition of the title they dangle. As I concluded in *Haji v Attorney General & 4 others; Athman & another (Interested Parties)* [2024] KEELC 457 (KLR):

“On the other hand, the 3<sup>rd</sup> to 5<sup>th</sup> respondents/cross petitioners given the findings in petition No Malindi Environment and Land Court Case No 62 of 2012 and lack of all necessary entries and the holistic history of Title No Lamu/Manda Island/259, the fraud assigned to the 2<sup>nd</sup> interested party cannot stand. And therefore, I could not find for any of the petitioners either in the main petition or the cross-petition. Perhaps a rematch between the 3<sup>rd</sup> to the 5<sup>th</sup> respondents/cross petitioners and the 2<sup>nd</sup> interested party/ 5<sup>th</sup> respondent may be necessary to trace the root of the title. I could not succeed here.

59. In a nutshell, both the petition and the cross-petition are denied, and each party will be responsible for paying its own costs. The explanation for this is that none of the parties provided the real evidence that was required to help this Court make a comprehensive and conclusive judgment on the Constitutional issues posed. In Kiswahili, we say “kufichiana kadi,” meaning that each side kept the other guessing about when the other side unleash the crucial or “wild card”, leading to the distortion of both the petition and cross-petition.

84. The court cannot file the lacuna left by the 4th, 5th, and 6th Respondents' failure to complete the chain of documents leading to the two sets of leases. Perhaps that is, as stated, an exploration of a typical civil matter.

85. Therefore, the reliefs sought in the petition cannot be granted and are hereby dismissed.

86. On costs, looking at how the petition was conducted, I did not see parties acting in abundant good faith—uberrime fidei. As I have said, the chain of events collapsed, leading to the failure to produce the several sets of documents that could have been in the hands of the 4th, 5th, and 6th Respondent or explain how the two sets of leases were arrived at to assist the Court in making an informed decision. Each party will bear its costs.

**DATED, SIGNED, AND DELIVERED AT MALINDI VIRTUALLY ON THIS 18<sup>TH</sup> DECEMBER 2024.**

**E. K. MAKORI**

**JUDGE**

In the Presence of:

Mr. Kibunja, for the Petitioners.

Mr. Mwanzia, for the 1<sup>st</sup> and 2<sup>nd</sup> Respondents

Mr. Cohen, for the 3<sup>rd</sup> Respondent

Happy: Court Assistant

