Kenya Agricultural and Livestock Research Organization v Ngoka & 15 others (Environment & Land Case 41 of 2020) [2024] KEELC 14132 (KLR) (18 December 2024) (Judgment)

Neutral citation: [2024] KEELC 14132 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MALINDI

ENVIRONMENT & LAND CASE 41 OF 2020

EK MAKORI, J

DECEMBER 18, 2024

BETWEEN

KENYA AGRICULTURAL AND LIVESTOCK RESEARCH ORGANIZATION ..... PLAINTIFF

AND

SHARIFF BAYA NGOKA ..... 1ST DEFENDANT

EZEKIEL KAI ..... 2ND DEFENDANT

MARY KITI ..... 3RD DEFENDANT

ZAINABU SHARIFF ..... 4TH DEFENDANT

PETER MUPE NGARA ..... 5TH DEFENDANT

PATRICIA WAMBUGHA MSAFIRI ..... 6TH DEFENDANT

ROBERT MUYES ..... 7TH DEFENDANT

BAHATI K MWAFONDO ..... 8TH DEFENDANT

JOHN KATAWA HINDI ..... 9TH DEFENDANT

BEATRICE D KATTI ..... 10TH DEFENDANT

SILVIA DAMA MASHA ..... 11TH DEFENDANT

ROLYSIS AGENCIES LIMITED ..... 12TH DEFENDANT

LAND REGISTRAR, KILIFI COUNTY ..... 13TH DEFENDANT

LAND REGISTRAR, MOMBASA COUNTY ..... 14TH DEFENDANT

CHIEF LAND REGISTRAR ..... 15TH DEFENDANT

NATIONAL LAND COMMISSION ..... 16TH DEFENDANT

JUDGMENT

1. The Plaintiff, vide a Plaint dated 4th March 2020, seeks the following reliefs:

    a. A declaration that all that land occupied and possessed by the Plaintiff as marked "C" in the Map annexed as document No 1 in the Plaintiff's bundle of documents is an unalienated Public land belonging to the Government of Kenya as designated, possessed and used by the Plaintiff.

    b. A declaration does issue that the purported sub-division, alienation, creation, excision, and transfer of Titles L.R. Numbers. 29503 to the 1st, 2nd, 3rd, 4th, 5th, 6th and 7th Defendants, Title L.R. Number 31120 to the, 8th, 9th, 10th and 11th Defendants and Title L.R. Number. 31121 to the 12th Defendant respectively is invalid, null, and void ab initio in so far as the same relates, touches on, and is directed at a portion(s) of the parcel of land occupied and in possession of the Plaintiff Marked as 'C' in the map annexed as document number 1 in the Plaintiff's List and Bundle of documents.

    c. An order issued directing the Land Registrars Kilifi and Mombasa Lands Registries and the Chief Land Registrar sued as the 13th, 14th, and 15th Defendant's herein respectively and or such other competent person(s), office or institution to recall, revoke, cancel and or nullify the Title Deed given in favour of the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, 8th, 9th, 10th, 11th and 12th Defendants over all those parcels of lands described as Land Reference Numbers 29503, 31120 and 31121 held respectively by the 1st, 2nd, 3rd, 4th, 5th, 6th and 7th, 8th, 9th, 10th, 11th Defendants and 12th Defendant and thereby extinguishing any rights that they may have to the said parcels of land.

    d. An order of rectification is issued against the Land Registrars Kilifi and Mombasa Land Registries. The Chief Land Registrar sued as the 13th, 14th, and 15th Defendants herein to rectify the records and or register at the Lands Registry, Kilifi and Mombasa, and or any such successor land registry so as to reflect or read the Plaintiff as the registered proprietor of all those pieces of land described as Land Reference Numbers 29503, 31120 and 31121.

    e. A permanent injunction is issued restraining the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, 8th, 9th, 10th, 11th, and 12th Defendants by themselves, servants, agents, employees and or any other person howsoever acting under their authority from trespassing, encroaching onto, remaining on and or developing, building, constructing and or erecting any building or structure of any type, selling, charging, disposing off and or in any other way whatsoever interfering with all that Plaintiff's Mariakani Parcel of Land marked "C" in the map annexed as document No. 1 in the plaintiff's bundle of documents as occupied and possessed by the plaintiff and more particularly subdivision portions thereof described as Land References Numbers 29503, 31120 and 31121.

    f. Costs of this suit to be borne by the Defendants.

    g. Any other and/or further relief this Honorable Court may deem just and fit to grant.

2. The 13th to 15th Defendants entered appearance on 24th July, 2020 and filed a statement of defence on 10th September, 2021.

3. On 24th September 2020, Plaintiff was granted leave to serve pleadings upon the 1st to 12th Defendants through advertisement in a local newspaper with national circulation. The advertisement was made in

the Daily Nation on 9th October 2020, as seen in the Affidavit of Service of S J.Saenyi sworn on 19th October 2020.

4. The 1st to 12th Defendants neither entered appearance nor filed a statement of defence. Interlocutory judgment was entered against them on 1st March, 2021. The 16th Defendant similarly did not enter an appearance or file a defense. Interlocutory judgment was entered against it on 2nd May 2023.

5. The parties were directed to file written submissions after a hearing. Based on the evidence adduced, the materials placed before me, and the parties' submissions, I frame the issues for this Court to determine whether the Plaintiff has proved allegations of fraud assigned to the Defendants jointly or severally to warrant the raft of orders sought in the Plaint and who should bear the costs of the suit.

6. I reckon that Mr. Ngethe, learned counsel for the Plaintiff, supplied this Court with extensive submissions on the issues raised by the Plaint. He cited various provisions of *the Constitution*, statutory provisions, and relevant precedents from the Superior Courts concerning the subject matter. Mr.Munga, learned Senior State counsel for the 13th, 14th, and 15th Defendants, did the same. I will revert to the same in my judgment.

7. Henry Mbaluku, the Manager Property Management of the Plaintiff, adopted his witness statement filed on 17th June 2020 as his evidence in chief. He produced the Documents listed in the Plaintiff's Amended List of Documents dated 10th July 2023 as Exhibits 1 to 29. The documents were attached to the Plaintiff's List of Documents dated 4th March 2020. He produced the extract of a valuation report of KARI for the year 2012 compiled by Syagga & Associates contained in the Plaintiff's Supplementary List of Documents dated 10th July, 2023, as Exhibit 30.

8. The Plaintiff's evidence was not challenged by the 1st to 12th Defendants, who did not give evidence at the hearing hereof.

9. In cross-examination, he testified that Plaintiff's predecessor, Kenya Agricultural Research Institute (KARI), commenced researching the suit properties in 1979. The Plaintiff, upon establishment, took over the functions of KARI together with the suit properties. The suit properties were 1000 acres before 70 acres were taken by the railway. There were no beacons on the suit properties. There was no contradiction between his testimony to the effect that the Plaintiff's land was 1000 acres and that of the Plaintiff's Director General, who had indicated in the letter dated 4th September 2013 that the land was 446 acres. The Plaintiff's Director General was referring to the land on the Kilifi side. The Plaintiff did not engage a government surveyor in the suit properties. In reexamination, it was his testimony that Plaintiff had advertised in the newspaper that it was pursuing a Part Development Plan as per the advertisement on page 98 of the Plaintiff's Bundle of Documents.

10. George Nyangweso, the Senior Registrar of Titles employed in the Ministry of Lands and Physical Planning at the registry in Mombasa, adopted his witness statement dated 10th January 2024 as his evidence in chief. He produced the 13th to 15th Defendants' Bundle of Documents dated 23rd November 2021 as exhibits 1 to 8

11. In cross-examination, he testified that the parcels of land were previously government land. He did not have any consent from the County Council of Kilifi and Mombasa to allow the alienation of the suit properties. He was aware that Article 62(1)(b) of *the Constitution* defines public land to include land lawfully held, used, or occupied by any State organ, except any such land that is occupied by the State organ as lessee under a private lease. He agreed that the Plaintiff is a state organ that engages in research. He did not know how the Plaintiff entered into the suit properties. He was aware that the Government Lands Act required that the land be sold through public auction before the allocation of public land. He did not have proof of the sale of the suit properties through public auction. He did not have proof

that the land was valued to determine the sale price. He did not have proof that a Part Development Plan (P.D.P) was prepared, and he did not have any newspaper advertisement for the P.D.P. He could not provide proof that the suit properties were surveyed. He did not have any proof that a cadastral survey was authenticated by the Director of Surveys. He did not have an application of subdivision leading to the subdivision of the suit properties. The P.D.P gives the identity of the parcel of land.

12. He did not have any letters of allotment. A letter of allotment requires acceptance and meeting of the conditions. He did not have proof of acceptance and compliance with any terms of a letter of allotment. The letters of allotment require payments to be made. He did not have proof of payment of any charges or fees in relation to a letter of allotment. Issuance of titles without letters of allotment is fraudulent. As a Land registrar, he does not ask questions when the Chief Land Registrar forwards documents for registration. Leases are prepared from the headquarters in Nairobi.

13. In reexamination, he testified that several officers were involved before processing titles. The Registrar only comes at the time of registration. He could only answer questions within his jurisdiction.

14. Whether the plaintiff proved fraud, misrepresentation, illegality, and/or irregularity on the part of the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, 8th, 9th, 10th, 11th, 12th, 13th, 14th and 15th defendants jointly and/or severally. Mr. Ngethe, learned counsel for the Plaintiff, believes such a case has been established here. He asserts that Plaintiff, in paragraph 11 of the plaint, has challenged the root of the titles issued in the names of the 1st to 12th Defendants. Therefore, the 1st to 15th Defendants had the burden of establishing that the root of the titles of the 1st to 12th Defendants was legal, free from irregularity, illegalities, encumbrances, misrepresentation, and fraud. He cites the celebrated case of Munyu Maina v Hiram Gathiha Maina [2013] eKLR that the 1st to 12th Defendants cannot dangle titles in their possession without proof of how they acquired the same. They did not attend Court to defend their titles; hence, the particulars of fraud assigned to them are attached.

15. Mr Munga, learned Senior State Counsel representing the 13th to 15th Defendants, believes the Plaintiff has not proved fraud assigned to his clients. He averred that Plaintiff failed to prove the alleged fraud with a degree of specificity that there was any collusion between the 13th, 14th, and 15th defendants and any other Defendants to defraud or illegally transfer the suit properties to them. He cites the decision in Emfil Limited v Registrar of Titles Mombasa & 2 others [2014] eKLR that held that allegations of fraud are serious and customarily require to be strictly pleaded and proved on a higher standard than the ordinary standard of balance of probabilities.

16. Besides, counsel submitted that It is clear that the proper party enabled by *the constitution* to manage the public land on behalf of the national and county government is the National Land Commission. The lapse of inadequately carrying out their duties cannot form the basis for persecuting the land registrar for adequately carrying out their functions. Counsel believes his clients cannot be held liable.

17. As stated, the 1st to 12th Defendant did not enter appearance to defend its decision to allocate this land to the 1st to 12th Defendants. The 16th Defendant did not appear to defend the decision to allocate the suit property to the 1st to 12th Defendants.I agree and adopt the submissions by Mr. Ngethe for the Plaintiff that the 1st to 12th had the burden of establishing that the root of the titles of the 1st to 12th Defendants was legal, free from irregularity, illegalities, encumbrances, misrepresentation, and fraud. In Munyu Maina v Hiram Gathiha Maina [2013] eKLR, the Court of Appeal stated as follows:

> " We state that when a registered proprietor's root of title is under challenge, it is not sufficient to dangle the instrument of title as proof of ownership. It is this instrument of title that is in challenge and the registered proprietor must go beyond the instrument and prove the legality of how he acquired the title and show that the acquisition was legal, formal and

free from any encumbrances including any and all interests which need not be noted on the register. It is our considered view that the respondent did not go this extra mile that is required of him and no evidence was led to rebut the appellant's testimony. We find that a trust exists in relation to the suit property".

18. The 1st to 12th Defendants did not tender any evidence to prove that the root of their titles was legal, free from irregularity, illegalities, encumbrances, misrepresentation, and fraud. The evidence of the 13th to 15th Defendants only proved that the titles of the 1st to 12th Defendants were illegal, null, and void.

19. In paragraph 11(d) of the Plaint, Plaintiff pleaded that its Mariakani Land, as occupied by it, has at all material times remained in possession and ownership of the Plaintiff. The Plaintiff's consent, participation, and/or permission was never sought before the same was excised and registered as the suit lands in the 1st to 12th Defendants' names. In paragraph 11(h) of the Plaint, Plaintiff pleaded that the 1st to 15th Defendants purported to excise, alienate, transfer, and issue titles with land parcel numbers to the 1st to 12th Defendants. Yet, Plaintiff still possesses and uses the same land for the public good. In paragraph 11(l) of the Plaint, the Plaintiff pleaded that the 1st to 15th Defendants manufactured fictitious and/or fake titles over a portion of the Plaintiff's Mariakani Land while well aware that the same belongs to, is in possession of, and is occupied by the Plaintiff.

20. PW1 testified that the Plaintiff is a Statutory Body established under the *Kenya Agricultural and Livestock Research Act*, 2013, with the mandate to promote, streamline, co-ordinate and regulate research in crops, livestock, marine, and fisheries, genetic resources, and biotechnology in Kenya and expedite the equitable access to research information, resources, and technology and promote the application of research findings and technology in the field of Agriculture.

21. The Plaintiff, by itself or through its predecessors in title, is a State Corporation, and to enable it to undertake its function as established by law effectively, the Government of Kenya allocated designated and unalienated parcels of land in various parts of the country. One unalienated parcel of land designated and set aside by the Government to be held, possessed, and used by the Plaintiff was about 1000 acres of land spread across Kilifi and Kwale Counties designated as an animal research and husbandry sub-center. The railway line splits the parcel of land into two blocks. The area lying in Kilifi county comprises the Dairy herd area and is paddocked into six fields, while the area lying in Kwale county comprises the beef herd area and is paddocked into twenty fields.

22. The said pockets of sand, murram outcrops, low-lying bushes, and thickets characterize a parcel of land. The soil is mainly red sandy soil - Plaintiff's bundle of documents are colored satellite and site maps, respectively - Plaintiff's Mariakani Land.

23. Over the years and in a bid to effectively carry out its mandate the Plaintiff has put up and erected buildings and structures on the said parcel of land, including but not limited to an office block, Animal husbandry office, Wood workshop, Mechanical workshop, Stores, Calf pens, Greenhouse, Cattle sheds, Dairy units, Goat houses, Beekeeping workshop, Poultry research house, chicken house, food store, chicken sheds, cattle plug dip, junior staff quarters comprising of houses, toilet blocks, residential blocks, shower block safe, senior staff houses comprises of director's house, domestic staff quarters, staff house, multiple grade staff houses, site works, access roads, drives, parking, water supply and reticulation, drainage, fencing, and electricity supply, etc.

24. The documents relied upon by Plaintiff to prove occupation of the suit property are on pages 36 to 62, 81 to 93 of the Plaintiff's Bundle of Documents dated 10th July 2023. Some of the documents are:

    a. Valuation Report by Kinyua Koech Limited dated 2nd August 2005.

b. Handing over report dated 14th January 2004.

c. A Letter dated 21 June 2008, signed by the Officer in Charge of KARI Mariakani, updates the Director of KARI on the progress made towards rehabilitating two houses at KARI Mariakani.

d. A Letter dated 24 November 2008, signed by the Officer in Charge KARI Mariakani, updates the Director KARI on the completion of four staff houses under rehabilitation at KARI-Mariakani.

e. A Letter dated 5 December 2008, signed by the Officer in charge, KARI Mariakani, updated the Director, KARI, that the China Road Bridge Corporation had reinstated the fence to its original positioning.

f. Letter dated 8th June 2009 signed by the Officer in Charge KARI Mariakani notifying the Director KARI that one of the animals had died of anthrax and the farm had been quarantined.

g. The plaintiff's Letter dated 4th September 2013 to the National Land Commission gives a history of the Plaintiff's occupation of the suit properties.

25. The Plaintiff also produced an extract of the KARI valuation report for the year 2012 compiled by Syagga & Associates Limited, showing the developments that KALRO had put on the land in question. In the Plaintiff's Supplementary List of Documents dated 10th July, 2023. The inspection was done between 4th and 5th June 2012. The evidence presented by the Plaintiff proved that it has always been in possession of the suit properties.

26. DW1 was questioned as to whether the 13th to 15th Defendants could have processed titles in the name of the 1st to 12th Defendants if they were aware that the Plaintiff was in occupation of the suit properties. His answer was in the negative.

27. From the letter dated 4 September 2013 from the Director General of the Plaintiff, it is clear that Kenya Agricultural Research Institute (KARI) Mariakani, the Plaintiff's predecessor, occupied the suit properties in 1979 after taking over the research division of the Ministry of Agriculture—the Bundle Documents dated 4th March 2020.

28. As rightly submitted by Mr. Ngethe for the Plaintiff, Section 52 of the *Kenya Agricultural and Livestock Research Act* 2013 provides:

> " Rights and obligations
>
> All rights, obligations and contracts which, immediately before the coming into operation of this Act, were vested in or imposed on a former institution shall by virtue of this section, be deemed to be the rights, obligations and contracts of the Organisation".

29. Under the Fourth Schedule of the Act, Kenya Agricultural Research Institute (KARI) is one former institution. The Plaintiff, therefore, by dint of an Act of Parliament, took over the functions and assets of (KARI). The plaintiff is a state organ and/or state department that has, at all material times, been in occupation and has been using the suit properties for research before, during, and after registration of the same in the names of the 1st to 12th Defendants. The land remained unalienated government land, not available to be allocated to any private persons or even any other government agents without the consent of the Plaintiff.

30. The Kenya Agricultural and Livestock Research Organization v Kisii County & another [2019] eKLR decision cited by Mr. Ngethe for the Plaintiff, which I agree with is relevant:

> " There can be no doubt that the suit property was reserved for research and that was the function that the Petitioner was carrying on the land since 1963 when the land was allocated or alienated at least without consultation and participation of the Petitioner.The argument by the 1st Respondent that the Petitioner was not the owner of the land and did not have any right to it in my view cannot hold. It is evident that the Petitioner was in possession and occupation of alienated public land as defined under Article 62 of *the Constitution* and the land was reserved for research for agricultural purposes. The Petitioner is a public body established under an Act of Parliament and receives funding from the National Government for its activities. The Petitioner has mandate to acquire and hold public properties such as the suit property and in my view the Petitioner had proprietary interest over the suit property and in that regard no person had the right to deal with the property in a manner that was prejudicial to the interests of the Petitioner without appropriate consultations with the Petitioner".

31. The same finding was made in Kenya Agricultural and Livestock Research Organization (Kalro) v County Government of Kitui [2019] eKLR. In this case, the court found that Article 62(1) (b) of *the Constitution*, just like the repealed Constitution, does not require a public body or State Organ to have a title for the land it is using or occupying to prove ownership of the same. All that a State organ is supposed to prove is that it is "lawfully holding, using or occupying" land except in a situation where it has leased the land from a private person. The court stated as follows:

> " 16. The Petitioner is a public agricultural and livestock research organization established under the *Kenya Agricultural and Livestock Research Act*, No. 17 of 2013. The Act mandates the Petitioner to expedite equitable access to research, information, resources and technology to the public and promote the application of research findings and technology in the field of agriculture.
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> 17. It is not in dispute that the Petitioner is the Successor of Kenya Agricultural Research Institute (KARI) which was established under the Science and Technology Act (repealed). It is also not in dispute that KARI operated the Kenya Agricultural and Livestock Research Organization (KALRO) Ithookwe Dryland Research Sub-Centre from around the year 1979.
>
> PARA ...29.
>
> Article 62(1) (b) of *the Constitution* has defined Public land to include "land lawfully held, used or occupied by any State organ, except any such land that is occupied by the State organ as lessee under a private lease." Such land vests in the national government in trust for the people of Kenya, and is to be administered on their behalf by the National Land Commission (See Article 62(3) of *the Constitution*).
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> ... 35. Having found that it is the Petitioner that is entitled to the suit land, I find and hold that the purported takeover of the suit land by the Respondent is an infringement of the Petitioner's right to own property as provided under Article 40 of *the Constitution*. The Respondent should therefore vacate the said land.

30. Indeed, Article 62(1) (b) of *the Constitution*, just like the repealed Constitution, does not require a public body or State organ to have a title for the land it is using or occupying to prove ownership of the same. All that a State organ is supposed to prove is that it is "lawfully holding, using or occupying" land except in a situation where it has leased the land from a private person.

31. As I have stated above, the suit land was reserved by the Respondent's predecessor for agricultural research purposes in 1977, and has always been used by the Petitioner and its predecessor since then until now. Being the custodians of the records of its predecessor, the burden of proving that the suit land was not lawfully set apart for research purposes was on the Respondent and not the Petitioner. The Respondent failed to do so.

32. Having reserved the land for agricultural research purposes in 1977, and having handed over the land to the Petitioner and its predecessor who have continued to use it for the reserved public purpose, I find and hold that the Petitioner and its predecessor are entitled to the said land. Indeed, the suit land was being lawfully held, used and occupied by the Petitioner, which is a State organ, and is public land pursuant to the provision of Article 62(2) (b) of *the Constitution*".

32. It follows that the purported alienation of the suit properties while the Plaintiff remained in possession was thus irregular, illegal, and fraudulent since the infrastructure on the suit properties is enormous, making it impossible for anyone to purport to acquire any interest thereon.DW1 testified and confirmed that if the 13th to 15th Defendants were aware of the Plaintiff's occupation of the suit properties, they could not have processed titles in the Defendants' name. The fact that titles were processed in the names of the 1st to 12th Defendants, notwithstanding the occupation and use of the Plaintiff, is conclusive proof that the 1st to 12th Defendants misrepresented facts to the 13th to 15th Defendants that the suit properties were vacant.

33. The particulars pleaded in the plaint against the 1st to 12th Defendant were therefore proved. As Mr. Ngethe submitted the decision in Chemey Investment Ltd vs Ag & 2 others [2018] eKLR is applicable here where the Court of Appeal stated thus:

> " We have noted that the Ekima Junior Academy never took possession of the suit property. It therefore means that when the appellant purported to purchase the same, the suit property was in the same condition it was when it was initially allocated, namely in use for public purposes. We ask ourselves, which innocent purchaser, without notice, would accept to purchase a property that is being used for public purposes, just next to the provincial headquarters and the law courts, without any form of inquiry". As this court stated in Arthi Highway Developers Limited vs West End Butchery Limited & 6 Others (Supra), only a foolhardy, and we may add, a careless or fraudulent investor would purchase land such as the suit property "with the alacrity of a potato dealer in Wakulima Market". And further in *Flemish Investments Ltd vs Town council of Mariakani. CA No. 30 of 2015*, in an appeal where the appellant who had fraudulently obtained registration of public property in his name but claimed to be an innocent purchaser for value without notice, this court stated: -
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> A bona fide purchaser exercising due diligence would be expected to inspect the property he is buying, to ascertain its physical location, person, if any, in occupation, developments, buildings and fixtures thereon, among others. If indeed the appellant honestly believed that

plot no. 34 and the cattle dip on it were part of the suit property, he would have rehabilitated the cattle dip as his property, or simply demolished it, not to pester the respondent for its relocation. For a party who was buying a commercial property rather than a ranch, the presence of a cattle dip on the property should have rang alarm bells".

34. As correctly submitted by Mr. Ngethe for the Plaintiff, the fact that the Plaintiff at all material times was in occupation, was using the suit properties, and had constructed infrastructure thereon meant that the land was encumbered and could not be passed to any other legal person be it private or public without the consent of the Plaintiff. An attempt to register the land in the names of the 1st to 12th Defendants was irregular, illegal, and fraudulent since the Plaintiff had interests visible to the whole world over the suit properties that need not have been noted in the register. See Munyu Maina v Hiram Gathiha Maina (supra)

35. The Plaintiff pleaded at paragraph 11 (e) of the plaint that the Lands Registrars at Kilifi, Mombasa, and Nairobi being in possession of documents and also aware that the suit land is held in the interest of the people of Kenya and vested to the Plaintiff could not legally purport to excise and issue titles over or transfer the Plaintiff's Mariakani Land or portions thereof to any other person whatsoever or at all without the sanction, knowledge and or consent of the Plaintiff and or the Government of Kenya in compliance with the applicable laws. The Plaintiff pleaded at paragraph 11 (f) of the plaint that Lands Registrars at Kilifi, Mombasa, and Nairobi created, tampered, interfered, and or allowed the tampering and or interference with the records in respect of the suit land at the Kilifi, Mombasa, and Nairobi Land Registries. The Plaintiff pleaded at paragraph 11 (g) of the plaint that Lands Registrars at Kilifi, Mombasa, and Nairobi carelessly and recklessly allowed access of the records created against the Plaintiff's Mariakani Land at the lands registry to third parties which fact they knew or ought to know would adversely affect the interests of the lawful owner and create room for fraud, land grabbing and perpetuation of impunity.DW1 claimed in cross-examination that the 13th and 14th Defendants had no obligation to confirm whether the suit properties were available for allocation. From the evidence of DW1 and as submitted by Mr. Munga, the 13th and 14th Defendants acted at the behest of the 16th Defendant – allocation of land is not done by the 13th and 15th Defendants. I believe the fraud assigned to the 13th and 14th Defendant cannot attach. It was the duty of the 16th Defendant to consult before allocation was done and not the 13th and 14th Defendants. The decision in Commissioner of Lands v Kunste Hotel Limited [1997] eKLR cited by Mr Ngethe for the Plaintiff captures is germane. In this case, the Respondent applied to be allocated unalienated government land or, as an alternative, made a road reserve. The Respondent did not want its hotel to be blocked from the road if the parcel of land in front of it became developed. The Court of Appeal affirmed the Superior Court's decision that the said land was alienated before. This hotel had expressed an interest and needed to be consulted:

> " There is material on record to show that the appellant consulted various parties before he decided to allot the plot to the interested party. It was common ground before the superior Court, and even before us, that Kunste Hotel Ltd. was not one of the parties which were consulted. So the issue which immediately presents itself is whether it should have been consulted. The appellant's and the case of the interested party both in the Court below and before us is that Kunste Hotel Ltd, had no right over the subject property, the plot was vacant government land, and that it did not show that whatever assurance that may have been given was specifically in respect of that plot. But as we stated earlier the subject plot is clearly the one Mr. Kagiri had wanted, either to be allotted to him or to be left as a road reserve.

.... The subject plot having then been vacant and unalienated it is quite obvious that it was the one he meant and it was the one the appellant had in mind when he said in his letter we referred to earlier that he was "pleased" to revise the plans in accordance with your request." The appellant was exercising his statutory powers under the Government Lands Act, when he decided to allot the subject plot to the interested party. The exercise of that discretion clearly affected the legal rights of Kunste Hotel Ltd. The exercise of that power was therefore judicial in nature and he was therefore obliged to hear all those who were likely to be affected by his decision (see, *Mirugi Kariuki v. A.G.) Civil Appeal No. 70 of 1991* (unreported). It is, therefore, our view and we so hold, that the appellant should have consulted the hotel along with the other parties before he decided to allot the plot to the interested party. He was aware of the request Mr. Kagiri had made in 1976. Consequently it does not lie in the appellant's or anybody else's mouth to argue, as counsel for the interested party sought to do, that in absence of registration the interest Kunste Hotel seeks to protect was non-existent, and it was, therefore, disentitled to a hearing before the plot was allotted to the interested party. Rimita, J. was therefore, right in the conclusions he came to, and we accordingly affirm his decision and dismiss this appeal with costs"

36. No evidence was presented to demonstrate that the Plaintiff occupies the land illegally. The Plaintiff, as a state organ and or government organ, has every right to continue using the suit properties for the purposes that led it to occupy the same. The absence of a document allocating the Plaintiff the suit properties does not mean that the Plaintiff has no right to continue occupying and using the suit properties. The fact that there is no document allocating Plaintiff the suit properties is not a license to register the suit properties in the name of third parties as submitted by Mr. Ngethe for the Plaintiff and correctly so - see Munyao J. in Kenya Anti-Corruption Commission v Frann Investments Limited & 6 others [2020] eKLR:

> "My view would be that where Government land had been specifically assigned for a specific public purpose, then so long as that public purpose remains, that land ought to be considered to be part of Government land that cannot be alienated to private individuals for private use. I do not think any other interpretation would make sense. I say so because it is a fact that historically, not all Government land had been titled. Probably the Government was easy that because such land is under its use, or has been assigned a public use, then nobody is going to tamper with it. But does it mean that because the Government has not issued an allotment letter to such land, to say a Government parastatal or Government Department, and has not issued a title to the body that is supposed to make use of the land, then the said land can be allocated to private individuals for private use? I do not think so. If this was to be the position, then developed infrastructure including roads, hospitals, schools, and even courts could be allocated to private individuals simply because no allotment letter or title had been issued. People would literally loot and grab all public infrastructure. Let us take the example of a court. If there is a survey plan, or a PDP that provides that certain land has been set aside by the Goverment for building a court, and a court is so built, but no allotment letter or title is issued to the judiciary, can a person now be allotted that land and hold private title to it for his own private use? I think that result would be absurd and I do not think that this was the purpose of the law when it defined what "unalienated Government land" is under the GLA.
>
> ... My view is that so long as land had, or has been, set aside by the Government for specific use, which use is apparent from the pertinent records, including survey plans and/or PDPs, or visible on the ground, then that land must be considered to be part of "alienated

Government land." That was indeed the basis of the holding by the Court of Appeal in the case of Chemey Investment Limited vs Attorney General & 2 Others (supra). In that case an allocation was made to the appellant for land that was being used as the Eldoret District Hospital. The Court of Appeal held that the alienation of the land to the petitioner was wrongful as it was being actively used as a public hospital. I am not therefore persuaded by the argument of counsel for the 1st – 6th defendants that because no prior allotment letter or title had issued for the land in issue, then the land could be alienated for private use

...Even if he did not do this kind of due diligence, he must have at least seen the houses on the land when he purchased Mr. Ali's alleged interest. On the land, there were houses, and I will not believe that he never inquired who has developed the houses, and what happened to them, since nobody was in residence. He must have known, one way or another, that these were customs houses owned by the Government, his very employer. Despite his evidence that the land was vacant when he purchased it, this is not true, because the documentary evidence and oral evidence adduced is clear, that there were customs houses on the land as late as at least the year 2003. It is therefore not true, that when Mr. Wahome purportedly purchased Mr. Ali's interest, the land was vacant, and that Mr. Wahome did not know that the land had been developed with Customs houses. Being alive to this fact, and assuming that he genuinely and innocently was purchasing Mr. Ali's interest, any prudent person would have inquired from the Customs Department on the sale of the property, so as to know the whereabouts of the allocation. In fact, given his position in the Customs Department, Mr. Wahome ought to first have been alarmed that it is a Customs House that was on sale, and at the very least, he ought to have raised his employer for clarification on whether this would be a good purchase. If this was not a scheme between Mr. Ali and Mr. Wahome to have the latter get this land on the cheap, Mr. Wahome knew that he was buying a house set aside for use by the Customs Department. He was certainly not an innocent purchaser for value".

37. The Plaintiff pleaded at paragraph 11(a) of the plaint that the subject plaintiff's Mariakani Land being public land and still required for public purposes as held, used, and occupied by the Plaintiff, having been designated and allocated as public land, no approval and/or consent as envisaged under the Government *Land Act*, the Lands Act and the *National Land Commission Act* was sought and or granted before alienation of the same to private property. The Plaintiff pleaded at paragraph 11(c) of the Plaint that the purported alienation of the suit property was never preceded by compliance with the governing provisions of the Government Lands Act, Cap 280 Laws of Kenya (now repealed), the Lands Act, and the National Lands Commission Act. Plaintiff pleaded at paragraph 11(i) of the Plaint that the 1st to 15th Defendants purported to dispose of, purchase, and/or facilitate disposing of and purchase of the suit properties without legal authority, consent, or valid legal documents. The Plaintiff pleaded at paragraph 11(k) of the Plaint that the 13th,14th, and 15th Defendants purported to issue or acquire a certificate of title in the name of the 1st to 12th Defendants over the suit lands while aware and or ought to be aware that the 1st to 12th Defendants could not acquire good titles premised on the preceding manufactured, fictitious and illegal transactions over the Plaintiff's Mariakani Land.DW1 testified that LR No. 29503 was registered as a new grant via a forwarding letter dated 21st February 2013 by the Commissioner of Lands. LR No. 311211 was forwarded via forwarding dated 28th June 2016 from the office of the 15th Defendant. As for LR.NO. 31120, no forwarding letter was produced. A perusal of the lease reveals that it is dated 28th June 2016. Having established the period the titles were registered, the applicable laws were the *Land Act* and National Commission Act.DW1 indicated that all three parcels of land were registered as new grants. This, therefore, means that the procedure for allocation of the suit properties had to be strictly complied with before registration of the same in

the name of the 1st of 12th Defendants. The starting point, as submitted by Mr. Ngethe for the Plaintiff and correctly so, is to ask who administers public land under *the Constitution* of Kenya. Article 62 of *the Constitution* provides as follows:

(1) Public land is--

(a) land which at the effective date was unalienated government land as defined by an Act of Parliament in force at the effective date;

(b) land lawfully held, used or occupied by any State organ, except any such land that is occupied by the State organ as lessee under a private lease;

(c) land transferred to the State by way of sale, reversion or surrender;

(d) land in respect of which no individual or community ownership can be established by any legal process;

(e) land in respect of which no heir can be identified by any legal process;

(f) all minerals and mineral oils as defined by law;

(g) government forests other than forests to which Article 63(2)(d)(i) applies, government game reserves, water catchment areas, national parks, government animal sanctuaries, and specially protected areas;

(h) all roads and thoroughfares provided for by an Act of Parliament;

(i) all rivers, lakes and other water bodies as defined by an Act of Parliament;

(j) the territorial sea, the exclusive economic zone and the sea bed;

(k) the continental shelf;

(l) all land between the high and low water marks;

(m) any land not classified as private or community land under this Constitution; and

(n) any other land declared to be public land by an Act of Parliament--

(i) in force at the effective date; or

(ii) enacted after the effective date.

(2) Public land shall vest in and be held by a county government in trust for the people resident in the county, and shall be administered on their behalf by the National Land Commission, if it is classified under--

(a) clause (1) (a), (c), (d) or (e); and (b) clause (1) (b), other than land held, used or occupied by a national State organ.

(3) Public land classified under clause (1) (f) to (m) shall vest in and be held by the national government in trust for the people of Kenya and shall be administered on their behalf by the National Land Commission. (4) Public land shall not be disposed of or otherwise used except in terms of an Act of Parliament specifying the nature and terms of that disposal or use."

38. Section 5(1) of the *National Land Commission Act* enumerates various functions of the Commission. It provides:

> " 5.
>
> (1) Pursuant to Article 67(2) of *the Constitution*, the functions of the Commission shall be — (a) to manage public land on behalf of the national and county governments;"

39. Section 12(2) of the *Land Act* provides as follows:

> " 2) The Commission shall ensure that any public land that has been identified for allocation does not fall within any of the following categories—
>
> ...
>
> SUBPARA (d)
>
> public land that has been reserved for security, education, research and other strategic public uses as may be prescribed"

40. Section 12(2) of the *Land Act* provides as follows:

> " 2) The Commission shall ensure that any public land that has been identified for allocation does not fall within any of the following categories—
>
> ...
>
> (d) public land that has been reserved for security, education, research and other strategic public uses as may be prescribed"

41. It is, therefore, clear that the 16th Defendant should administer public land. The defendant is, however, as submitted by Mr. Ngethe for the Plaintiffs and rightly so is prevented from allocating public land under Section 12(2) (d) of the *Land Act*, which is used for research.

42. The decision to allocate LR.No.29503, the 1st to 7th Defendants, LR. 31120 to the 8th to 11th and LR. 31121 to the 12th Defendant happened after the promulgation of the Kenyan Constitution in 2010 and after the enactment of the *Land Act* and *National Land Commission Act*. From the provisions of Article 62(2) and Article 62(3) of *the Constitution*, Section 5(1)(a) of the *National Land Commission Act*, and Section 12 of the *Land Act*, it is only the 16th Defendant that has the mandate to allocate public land. DW1 indeed stated in paragraph 10 of his witness statement that it is the 16th Defendant who could explain the alienation of public land.

43. Section 5(2)(a) of the *National Land Commission Act* provides as follows:

> " 2) In addition to the functions set out in subsection (1), the Commission shall, in accordance with Article 67(3) of *the Constitution*—
>
> a. on behalf of, and with the consent of the national and county governments, alienate public land;"

44. DW1 testified that he had no consent to allow alienation of the suit properties. Section 5(2)(a) of the *National Land Commission Act* was therefore disregarded in its totality. Therefore, the Commissioner of Lands and Chief Land Registrar had no authority to register the suit properties in the names of the

1st to 12th Defendants without the consent of the respective County Governments having been issued to the 16th Defendant.

45. Section 12(1) of the *Land Act* grants the National Land Commission, on behalf of the National or County Governments, the mandate to allocate public land by way of public auction to the highest bidder at the prevailing market price or by way of application confined to a targeted group of persons or by public notice of tenders, public drawing of lots, public request for proposals as may be prescribed; or by way of public exchanges of equal value as may be prescribed.

46. Section 14 (1) of the *Land Act* provides that the commission shall, before allocating any public land under the Act, issue, publish, or send a notice of action to the public and interested parties at least thirty days before offering for allocation, a tract or tracts of public land. The notice is supposed to include the terms, covenants, conditions, and reservations to be included in the conveyance document and the allocation method.

47. Section 14 (3) of the *Land Act* provides that the notice issued under section 14 (1) shall provide 15 days from its issuance, within which the public and interested parties may comment. At least 30 days before the public land allocation, the commission must send a notice to the governor in whose county the public land proposed for allocation is located. DW1 was questioned in cross-examination whether he had proof that the suit properties had been valued to determine the sale price. He answered that he did not have any proof. He was also questioned whether he had proof that the suit properties had been sold at public auction. He answered that he had no proof of sale by public auction.

48. As rightly submitted by Mr. Ngethe for the Plaintiff's failure by the 1st to 15th Defendants to adhere to the provisions of *the Constitution*, the *Land Act*, and the *National Land Commission Act* rendered the resulting titles irregular, illegal, null, and void. See Cordison International (K) Limited v Chairman National Land Commission & 44 others [2019] eKLR, where the Court of Appeal stated as follows:

> "Section 5 (1)(a) of the *National Land Commission Act* is also explicit that one of the functions of the National Land Commission is to manage public land on behalf of the national and county governments. Under section 5(2) of the Act the Commission may,
>
> "on behalf of, and with the consent of the national and county governments, alienate public land."
>
> 31. Section 12 of the *Land Act* grants the Commission authority to allocate public land on behalf of the national or county governments and section 14 of the Act specifies the steps that the Commission ought to take before it undertakes any such allocation. The Commission has to issue, publish or send a notice of action to the public and interested parties, at least thirty days before offering for allocation a tract or tracts of land.
>
> 32. At least thirty days prior to the allocation the Commission should send a notice to the governor in whose county the public land proposed for allocation is located and to the head of the governing body of any administrative subdivision having development control, among others. The notice should then be published in the Kenya Gazette and at least once a week for a period of three weeks and thereafter published in a newspaper of general circulation in the general vicinity of the land being proposed to be offered for allocation.
>
> 33. It is therefore clear beyond any peradventure that it is the role of the Commission, and not a county government, to allocate public land. The

allocation must however comply with the laid down constitutional and statutory procedure as stated above.

40. In view of the foregoing, it is obvious to us that the appellant had not taken cognizance of the new land policy that had been ushered by *the Constitution* of Kenya, 2010 and the *Land Act*; and as a result backed the wrong horse. The appellant ought to have engaged the National Land Commission as soon as it came into operation, given its constitutional and statutory role in allocation of public land".

49. In the present case, the 16th defendant had no input whatsoever in the process leading to the issuance of titles in the names of the 1st to 12th Defendants. This is conclusive proof that the titles held by the said Defendants are merely the end product of an illegal process. The mandatory procedure for alienating public land under the *Land Act* was also skipped. In view of the testimony by DWI that the role played by the 13th and 14th Defendants was at the direction of the 16th Defendant – it was imperative for the 16th Defendant to appear and shed light on how this allocation happened.

50. The *Land Act*, this time in Section 12(7), provides as follows:

"(7) Public land shall not be allocated unless it has been planned, surveyed and serviced and guidelines for its development prepared in accordance with section 16 of this Act."

51. There is, therefore, a glaring illegality in how the 1st to 12th Defendants acquired titles on parcels of land where no planning and no survey was done contrary to the statute.

52. The Plaintiff pleaded at paragraph 11(b) of the plaint that no letter of allotment was issued to the 1s, 2nd, 3rd, 4th, 5th, 6th, 7th, 8th, 9th, 10th, 11th and 12th Defendants approving the excision of the suit property" As submitted by Mr. Ngethe for the Plaintiff citing the decision in Miroro v Nyarumi & 5 others (Environment & Land Case 23 of 2019) [2023] KEELC 21533 (KLR) (15 November 2023) (Judgment)Justice Munyao J. addressing a similar issue stated as follows:

"I know that the allotment letter of Tom Nyagami is contested and there is argument that it was cloned out of the allotment letter of the 1st defendant. Even without determining this point, it is apparent, that if ever there was an allotment letter issued to Tom Nyagami, there was no acceptance of the conditions of offer, by making the requisite payments noted in the letter of allotment. Without there being an acceptance of the conditions and payment thereof, it cannot be said that there was an offer for a lease which Tom Nyagami then accepted so that there can be said to be a contract between Tom Nyagami and the Commissioner of Lands whereby the latter promises to issue a lease to the latter. I am clear in my mind that Tom Nyagami never made any payment to settle the amounts noted in the allotment letter and thus no lease could issue to him. I must hold, and do hereby hold, that the purported lease to Tom Nyagami, if at all issued, was unprocedurally issued as no payment in the allotment letter was ever made. In other words, no lease ought to have issued, at all, to Tom Nyagami, in respect of the suit property".

53. The absence of an allotment letter is irrefutable evidence that the Certificate of Lease of the 1st to 12th Defendants was not obtained through proper procedures, rendering it illegal and fraudulent. The lack of acceptance of the terms of a letter of allotment and non-payment of the charges therein further confirms the nullity of the Certificate of lease from the very beginning.

54. The Certificates of title issued to the 1st to 12th Defendants referred to the Government Lands Act. The said statute defined "unalienated government land" to mean:

> " Government land which is not for the time being leased to any other person, or in respect of which the Commissioner has not issued any letter of allotment."

55. Mr. Ngethe, for the Plaintiff, cited several judicial authorities regarding how unalienated Government land could be alienated; see, for example, Kenya Anti-Corruption Commission v Abel Sangonde Momanyi & another [2021] eKLR where the court stated as follows:

> " The second issue for determination is whether the Defendants acted fraudulently in alienating the suit property.
>
> PW2 gave an elaborate explanation of the procedure governing the alienation of public land. This procedure was aptly captured by Cherono J in the case of Ali Mohamed Dagane (Granted Power of Attorney by Abdullahi Muhumed Dagane, suing on behalf of the Estate of Mohamed Haji Dagane) v Hakar Abshir & 3 others [2021] eKLR where he stated as follows:
>
> "The process of the disposition of government land followed the following procedure: First, the respective municipal council in which the land to be disposed was situate had the mandate of advising the Commissioner of Lands on which portions of land could be disposed. This step would have required the responsible council to visit the area or to carry out a fact-finding mission to satisfy itself that the land was first of all government land and second that it was indeed available for disposition. See Harison Mwangi Nyota v Naivasha Municipal Council & 20 others [2019] eKLR
>
> .....
>
> The second step would be for the part development plan to be drawn up and approved by the Commissioner of Lands. See Nelson Kazungu Chai & 9 Others vs. Pwani University College (2014) eKLR
>
> .....
>
> The third step involved the determination of certain matters by the Commissioner of lands which matters are listed under Section 11 of the Government Lands Act (Repealed). The matters to be determined include the selling price at which the lease of the plot would be sold, the conditions to be inserted into the lease; the determination of any attaching special covenants and the period into which the term is to be divided and the annual rent payable in respect of each period.
>
> The fourth step would be for the gazettement of the plots to be sold, at least four weeks prior to the sale of the plots by auction under Section 13 of the Government Lands Act (Repealed). The notice was required to indicate the number of plots situate in an area; the upset price in respect of every plot; the term of the lease and rent payable, building conditions and any attaching special covenants.
>
> The fifth step would be for the sale of the plots by public auction to the highest bidder. Section 15 of the Government Lands Act (Repealed).
>
> The sixth step would be for the issuance of an allotment letter to the allotee. An allotment letter has been held not to be capable of conferring an interest in land, being nothing more than an offer, awaiting the fulfilment of the conditions stipulated therein by the offeree. See

the decisions in: Gladys Wanjiru Ngacha v Teresa Chepsaat & 4 others 182/1992 (Nyeri); and in Dr. Joseph N.K. Arap Ng'ok v Justice Moijo Ole Keiyua & 4 others C.A.60/1997

.....

In order for an allotment letter to become operative, the allotee was required to comply with the conditions set out therein including the payment of 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

.....

The allotment letter also must have attached to it a part development plan (PDP). See the decision in African Line Transport Co. Ltd Vs The Hon .AG, Mombasa HCCC No.276 of 2013 where Njagi J held as follows:

.....

The seventh step, which comes after the allotee has complied with the conditions set out in the allotment letter is the cadastral survey, its authentication and approval by the Director of Surveys and the issuance of a beacon certificate. The survey process precipitates the issuance of land reference numbers and finally the issuance of a certificate of lease.

.....

Having evaluated in detail the necessary steps to be followed, it is emergent that a litigant basing their interest in land on the foundation of an allotment letter must provide the following proof: First, the allotment letter from the Commissioner of Lands; Secondly, and attached to the allotment letter, a part development plan; Thirdly, proof that they complied with the conditions set out in the allotment letter, primarily that the stand premium and ground rent were paid, within the specified timeline. It would also help a litigant's case, although this may not be mandatory based on the stage of the transaction, to have a certified beacon certificate."

56. See also the decision by the Apex Court in Dina Management Limited v County Government of Mombasa & 5 others (Petition 8 (E010) of 2021) [2023] KESC 30 (KLR) (21 April 2023) (Judgment)

> "We note that the suit property was allocated to HE Daniel T Arap Moi, who was not a party to the suit.The 2nd to 6th respondents on the other hand at the trial court in the replying affidavit of Gordon Odeka Ochieng in response to ELC Petition 12 of 2017 stated that certain documents that were required to support the allocation of the suit property to HE Daniel T Arap Moi were missing. These were, "the letter of application addressed to the Commissioner of Lands seeking to be allocated the suit land; and a Part Development Plan (PDP) showing the suit property in relation to the neighbouring parcels of land.As we have established above, before allocation of the unalienated Government Land, there ought to have been processes to be followed prior. Further, we cannot, on the basis of indefeasibility of title, sanction irregularities and illegalities in the allocation of public land. It is not enough for a party to state that they have a lease or title to the property. In the case of Funzi Development Ltd & others v County Council of Kwale, Mombasa Civil Appeal No 252 of 2005 [2014] eKLR the Court of Appeal, which decision this court affirmed, stated that:
>
> " ...a registered proprietor acquires an absolute and indefeasible title if and only if the allocation was legal, proper and regular. A court of law cannot on the basis of indefeasibility

of title sanction an illegality or gives its seal of approval to an illegal or irregularly obtained title.""

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

57. Furthermore, in Chemey Investment Limited v Attorney General & 2 others [2018] eKLR on the same topic, the Court of Appeal stated as follows:

> "Decisions abound where courts in this land have consistently declined to recognise and protect title to land, which has been obtained illegally or fraudulently, merely because a person is entered in the register as proprietor. See for example Niaz Mohamed Jan Mohamed v. Commissioner for Lands & 4 Others [1996] eKLR; Funzi Island Development Ltd & 2 Others v. County Council of Kwale (supra); Republic v. Minister for Transport & Communications & 5 Others ex parte Waa Ship Garbage Collectors & 15 OthersKLR (E&L) 1, 563; John Peter Mureithi & 2 Others v. Attorney General & 4 Others [2006] eKLR; Kenya National Highway Authority v. Shalien Masood Mughal & 5 Others (2017) eKLR; Arthi Highway Developers Limited v. West End Butchery Limited & 6 Others [2015] eKLR: Munyu Maina v Hiram Gathiha Maina [2013] eKLR and Milan Kumarn Shah & Others v. City Council of Nairobi & Others, HCCC No. 1024 of 2005.The effect of all those decisions is that sanctity of title was never intended or understood to be a vehicle for fraud and illegalities or an avenue for unjust enrichment at public expense.
>
> Turning to the facts of this appeal, it is not in dispute that at the time the initial allotees applied to be allocated the suit property, it was government land on which were erected buildings used for public purposes. The allotees deliberately represented that the suit property was vacant and the commissioner of lands, who should have known better, went along with the deliberate misrepresentation. Even though pretending that the suit property was vacant, the commissioner on 6th September requested the district commissioner to constitute a board of surveyors to literal facilitate the condemnation of the public premises on the suit property to facilitate its allocation. The appellant claims that we should applaud rather than condemn that level of efficiency, but with respect, what we see is not efficient delivery of public service, but rather, deliberate and shameless fast-tracking of a flawed process to facilitate quick theft of public property. Such hurried and manipulated exercises must never be confused with efficient service to the public. As is evidently clear, the persons in whose favour the exercise was speeded up were not your ordinary Kenya citizens, but well-heeled and connected individuals, bureaucratically and politically.
>
> The evidence on record also shows that the prescribed procedure for boarding of government premises as prescribed in the Government Financial Regulations and Procedures and the Ministry of Works and Housing Circular No 2/58 of 1958was ignored with impunity, leading to the complete sidestepping the Permanent Secretary and the Treasury who are key players in the exercise.
>
> ...To the appellant, it is in public interest to ensure that the law is strictly followed to address any grievance the respondents may have; otherwise the result will be the law of the jungle and utter chaos. The learned judge below preferred to err on the side of public interest that would resort in restoration of the suit property to public use. In the peculiar circumstances

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

58. In a nutshell, Plaintiff has proved its case against the 1st to 12th Defendants and the 16th Defendants to warrant the orders sought in the plaint. The court thus issues and makes the various declarations as sought at prayers (a) and (b) of the Plaint. The titles issued to the 1st to 12th Defendants, having been a product of irregularity, misrepresentation, illegalities, and fraud, be and are hereby recalled, revoked, and nullified. Thereafter, the register be rectified as sought at prayers (c) and (d) of the Plaint. A permanent injunction, as sought at prayer (e) of the Plaint, be and is hereby issued to prevent the 1st to 12th Defendants from ever entering the suit properties. In any event, costs are to be borne by the 1st to, 12th, and 16th Defendants.

59. The Court expresses its gratitude to Mr. Ngethe for the Plaintiff for the submissions and the judicial authorities cited regarding the subject matter in issue, which essentially assisted this Court in reaching the final verdict.

DATED, SIGNED, AND DELIVERED AT MALINDI VIRTUALLY ON THIS 18TH DECEMBER 2024.

E. K. MAKORI

JUDGE

In the Presence of:

Mr. Ngethe, for the Plaintiff.

Mr. Wakhungu H/B for Mr. Munga for the 13th, 14th and 15th Defendants

Happy: Court Assistant