



**Mkamenyi Farmers Co-operative Society Limited v Ministry of Lands and
Physical Planning & 8 others (Environment & Land Case 015 of 2023)
[2025] KEELC 3075 (KLR) (Environment and Land) (27 March 2025) (Judgment)**

Neutral citation: [2025] KEELC 3075 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT VOI
ENVIRONMENT AND LAND
ENVIRONMENT & LAND CASE 015 OF 2023
EK WABWOTO, J
MARCH 27, 2025**

BETWEEN

MKAMENYI FARMERS CO-OPERATIVE SOCIETY LIMITED PLAINTIFF

AND

THE MINISTRY OF LANDS AND PHYSICAL PLANNING 1ST DEFENDANT

THE NATIONAL LANDS COMMISSION 2ND DEFENDANT

THE REGISTRAR OF TITLES–TAITA TAVETA COUNTY 3RD DEFENDANT

THE HONOURABLE ATTORNEY GENERAL 4TH DEFENDANT

THE COUNTY GOVERNMENT OF TAITA TAVETA 5TH DEFENDANT

VOI SISAL ESTATES LIMITED 6TH DEFENDANT

VOI PLANTATION LIMITED 7TH DEFENDANT

VOI POINT LIMITED 8TH DEFENDANT

DIAMOND TRUST BANK LIMITED 9TH DEFENDANT

JUDGMENT

1. The Plaintiff instituted this suit vide a plaint dated 11th October 2019 seeking for the following reliefs against the Defendants herein jointly and severally:-
 - i. A declaration that the grant of lease of the suit property to the 6th Defendant was illegal and or wrong and therefore null and void.



- ii. Upon grant of prayer 1 above, a declaration that the transfer of the suit property by the 6th Defendant to the 7th Defendant and that of the 7th Defendant to the 8th Defendant were also illegal and or wrong and are therefore null and void.
 - iii. In the alternative, the prayer 2 above and upon this court upholding the grant of the lease of the suit property to the 6th Defendant, a declaration that the transfer of the suit property by the 6th Defendant to the 7th Defendant and that of the 7th Defendant to the 8th Defendant is illegal and or wrong for breach of the terms of the lease.
 - iv. A declaration that the 8th Defendant's subdivision of the suit property is illegal and or wrong and therefore null and void.
 - v. A declaration that the 9th Defendant's act of accepting the charge of the suit property by the 6th, 7th and 8th Defendants is illegal and wrong as it was contrary to the conditions of the lease.
 - vi. A permanent injunction against the 8th Defendant, its employees, agents or people authorized by it from subdividing the suit property.
 - vii. An order rectifying the register and cancelling the Plaintiff as the lessee of the suit property.
 - viii. Costs of the suit.
2. The suit was contested by the Defendants save for the 5th Defendant. The 1st, 3rd and 4th Defendants filed a statement dated 27th February 2022 and the 2nd Defendant filed a statement of defence dated 15th June 2022. The 6th Defendant filed a Statement of Defence dated 6th December 2022. The 8th Defendant filed a Statement of Defence dated 18th November 2021. The 9th Defendant filed a written Statement of Defence dated 21st March 2022 while the 5th Defendant filed a statement of admission dated 20th February 2024.

The Plaintiff's case

- 3. It was the Plaintiff's case that it is comprised of more than 3,000 members who are residents of Mkamenyi village which is situated in the South West part of Voi town. Their members have always resided in Mkamenyi village which is situated within 1,953 hectares of LR No. 28683 delineated on the land on the Land Survey Plan Number 315806 (the suit property).
- 4. It was averred that the land prior to the establishment of the Kenya Colony in 1920 was owned by the forefathers of the Plaintiff's members in accordance with the Africa Customary and traditional land there and particularly that of the Taita Taveta Community. The colonial government surveyed, alienated and allocated the suit property to a white settler known as Major Lazen conferring a leasehold interest of 99 years from 1920 which period was to end in 2019.
- 5. It was further averred that the leasehold was based on a number of conditions which included that:-
 - i. The Lessee was to use it for agricultural and mainly sisal for commercial activities.
 - ii. The Lessee had no power or authority to sublease or transfer the lease to any person without the colonial government's authority.
- 6. It was contended that the original allottee established the sisal plantation but also breached some conditions by encroaching and over running land that was occupied by the forefathers of the Plaintiff, demolished households and evicted residents.



7. It was further contended that after the end of the lease period, Major Lazen surrendered the lease to the Government in 1980 and the suit property became public land.
8. According to the Plaintiff, the said surrender offered an opportunity to the 1st, 3rd and 4th Defendants to correct any wrong doing against the forefathers of the Plaintiff, however they allocated the suit property to Voi Sisal Estates Limited on a number of conditions.
9. Contrary to the set conditions, Voi Sisal Estates Limited transferred the lease to Voi Plantation Limited sometimes on 23rd February 2012. Voi Plantation Limited charged the suit property to Diamond Trust Bank of Kenya Limited for a sum of Kshs. 300,000,000/= and for United States Dollars 5,000,000/= The said charges were discharged on 13th February 2019. On the same day the suit property was transferred to Voi Point Limited for consideration of Kshs. 4,000,000,000/= and further on the same day the suit property was charged to Diamond Trust Bank Limited for the same amount and further charge of Kshs. 800,000,000/= was registered on the same day.
10. It was also averred that the 6th, 7th and 8th Defendants have continued harassing the members of the Plaintiff who are still residing on the property by causing their arrest and charging them in court.
11. The Plaintiff pleaded various violations against its members by the Defendants.
12. During trial, George Reuben Abdalla Mwanjala and Michael Ruel Mwawasi testified on behalf of the Plaintiffs as PW1 and PW2 respectively.
13. PW1, the Chairperson of the Plaintiff's Society adopted and relied on his witness statement together with the bundle of documents dated 11th October 2018 in his evidence in chief.
14. On cross-examination by Learned Counsel Mr. Makuto for the 1st, 3rd and 4th Defendants he stated that they do not have the title to the land neither have they applied for the same. He also denied ever filing another case in respect to the suit property.
15. On further cross-examination he stated that they did a search which confirmed that Voi Point Limited was the owner of the land. The search was done on 13th January 2019. He also stated that the Plaintiff society was started in 2016.
16. On cross examination by Learned Counsel Karega for the 6th Defendant he stated that the Plaintiff society was founded in 2016. He had not filed a list of its members. He had not filed any resolution and or minutes allowing them to file the suit. He also stated that they are not currently on the land. The houses that were put up were demolished.
17. On cross examination by Learned Counsel Mbugua for the 8th Defendant, he stated that there was no evidence that the land was given to the initial allottee as a gift. The same was not evident from the title.
18. Upon cross examination by Learned Counsel Mr. Ole Kina for the 9th Defendant, he stated that the land is charged to the 9th Defendant. The Defendant destroyed graves of their forefathers, he is claiming the land on behalf of his forefather. He does not have any letters of administration. They had made a complaint to the National Land Commission.
19. When re-examined, he stated that the registration of Voi Point Limited as the owner of the land was fraudulent. Some of their members are still living on the suit land. The 9th Defendant accepted an illegal transfer. No due diligence was done. There was no compliance to the terms of the lease.
20. PW2 adopted and relied on his witness statement in his evidence in chief. When cross examined by Learned Counsel Mr. Makuto, he stated that he did not have a resolution from the society. He was



not aware of any complaint made to the Senate. They had complained to National Land Commission. They are claiming the land. He was aware that the lease was extended.

21. He also stated that the land belongs to Voi Point Limited. There was a consent given for the transfer of the same. They have not filed any list of its members.
22. On cross-examination by Learned Counsel Karega, he stated that they had not identified which of the members resides inside and who resides outside the property.
23. He also stated that the land belongs to their forefathers even though currently owned by Voi Point Limited.
24. When cross examined by Learned Counsel Mr. Ole Kina, he stated that the 8th Defendant is the registered owner and that there was a consent for the charges made to the property.
25. Upon re-examination, he stated that the Defendants had never contested their authority to sue. He also stated that there was no consent from the Commissioner of Lands. The transfer was illegal.

The case of the 1st, 3rd and 4th Defendants

26. The 1st, 3rd and 4th Defendants filed a statement of defence dated 27th February 2022. They denied the averments made in the plaint and averred that the suit parcel was originally L.R No. 4637 registered as Grant No. CR 3814 and the grant was issued in favour of the British East African Corporation Limited in the year 1923 for a term of 99 years from 1st January 1923 to 1st January 2022, the land parcel known as LR No. 4637 registered as Grant No. CR 3814 was transferred to Voi Sisal Estates Limited on 6th August 1947 on 25th March 2011 the grant was surrendered to government to pave way for extension of the lease, the grant was extended for a further term of 99 years commencing on 1st January 1993 and was registered as Grant No. CR 51725, LR No. 28683 measuring approximately 1,953 Ha, on 23rd February 2012 the suit parcel was transferred to Voi Plantations Limited and on 13th February 2019 the parcel was transferred to Voi Point Limited.
27. It was also admitted that the suit parcel was charged to Diamond trust Bank of Kenya Limited for the sum of Kshs. 300,000,000/= and for USD 5,000,000/= however they denied being in breach of the lease.
28. It was stated that all the charges were discharged on 13th February 2019 and the suit property transferred to Voi Point Limited for Kshs. 4,000,000/= A charge to Diamond Trust Bank of Kenya Limited for Kshs. 4,000,000/= and a further charge of Kshs. 800,000,000/= were registered on the same day.
29. They also denied granting the 6th Defendant lease to the suit property and they averred that the grant was transferred to the 6th Defendant from the 1st registered owner on 6th August 1947.
30. In their statement of defence, they prayed for the dismissal of the Plaintiff's suit with costs.
31. During trial, Sheila Nasambu Soita, DW3 the Land Registrar testified on their behalf. She stated that the registered owner of the suit property was Voi Point Limited having been registered on 13th April 2019. She also stated that the 8th defendant went through the entire process. There was a receipt of stamp duty and consent for subdivision. She also stated that no restrictions were registered on the title.
32. When cross examined by Learned Counsel Mr. Mbugua for the 8th Defendant, she stated that the title was issued on 23rd February 2011 to Voi Sisal Estate Limited. The initial transfer was done on 6th August 1947 to Voi Sisal Limited. There is no transfer to the Plaintiff. The CR number changes when



- a new lease is given. The new CR No. is 5772. She had seen the 8th Defendants bundle which had the application for consent. She also stated that there were no restrictions on the said property.
33. On cross examination by Learned Counsel Karega for the 6th Defendant, she stated that the registration was in 1948, the grant was for 99 years from 1993. There was the surrender document and that the grant was surrendered before new one issued.
 34. When cross-examined by Learned Counsel Aboubakar for the Plaintiff, she stated that she had not brought the transfer documents. She did not have the letter for approval of the extension. The application for extension was done 12 years before expiry. The records of approval are available at their Nairobi office. There was a surrender to the government on. The consent was signed by the Land Board. The Director of Land Administration approved the subdivision.
 35. On cross examination by Learned Counsel Mr. Kiti for the 5th Defendant, she stated that the grant was surrendered to the government. LR. 28683 (Grant 51725) was registered pursuant to Surrender No. CR 881437 with effect from 1st January 1983. There was an extension of the lease. She did not have the approval from Municipal Council of Voi. The current registered owner is the 8th Defendant. The company was registered to the property on 13th February 2018. The company was incorporated on 14th December 2018. A sale agreement is not a requirement under the Land Registration Act. The stamp duty was Kshs. 80Million.
 36. On further cross examination she stated that the property had been subdivided into 28 portions. There is an approval and consent from County Government of Taita Taveta and Land Control Board. There is also a further consent from Director Land Administration.
 37. Upon cross examination by Learned Counsel Mwakio Mwangombe Advocate, she stated that the amount indicated in the consent to transfer was Kshs. 4 Billion. The C.R No. had changed because a change of user had been done. As per their records the stamp duty that was paid was for Kshs. 80 Million. The receipt in their custody was for Kshs. 40 Million.
 38. When re-examined, she stated that the Valuer access the stamp duty and once payment is done, it is sent to the collector of stamp duty. She also stated that there was no way the transfer would be done if stamp duty had not been paid in full.

The case of the 2nd Defendant

39. The 2nd Defendant filed a Statement of Defence dated 15th June 2022. The 2nd Defendant denied the averments made on the plaint and averred that the immediate registered owners of the property were entitled to rights of extension of lease but that did not stop the Plaintiffs from applying to the Commissioner of Lands to be allocated the land.
40. The 2nd Defendants denied that the Plaintiff applied to be allocated the land pursuant to the surrender. It was averred that the 8th Defendant's interest on the land are absolute and indefeasible. The 2nd Defendant prayed for dismissal of the suit with costs.
41. Save for filing its statement of defence, the 2nd Defendant did not call any witness to testify on its behalf.

The case of the 5th Defendant

42. The 5th Defendant filed a Statement of admission dated 20th February 2024.
43. It was averred that the lease was extended illegally without the consent of the Municipal Council of Voi once the property had been surrendered to the Government on 25th March 2011. It was also averred



that the grant was illegally transferred from Voi Sisal Estate Limited to Voi Plantation limited to Voi Point Limited and later charged to Diamond Trust Bank Kenya Limited illegally.

44. In its statement of admission, the 5th Defendant prayed for judgment to be entered in favour of the Plaintiff as prayed in the plaint save that upon granting of prayer 1 to 7 of the Plaint, the 5th Defendant be registered as the lessee of the suit property.
45. The 5th Defendant participated in the trial but did not call any witness to testify on its behalf.

The case of the 6th Defendant

46. The 6th Defendant filed a Statement of Defence dated 6th December 2022. It was averred that it held leasehold interest for 99 years from 1st January 1993 which terminated on 23rd February 2012 when it transferred the same to Voi Plantation Limited.
47. It was also averred that on or about 6th August 1997, the 6th Defendant acquired its initial interest in a much larger parcel of land measuring 5006 acres as evidenced in a previous grant CR No. 8814. Its acquired interest was the remainder of a term of 99 years from 1st January 1923. Before the lapse of that term of 99 years, the 6th Defendant applied for an extension of lease and one of the conditions for the grant of the lease evidenced in CR No. 51725 was the surrender of the lease evidenced in grant C.R No. 8814. On 3rd March 2011 the 6th Defendant surrendered its interest in grant C.R No. 8814 and was thereafter lawfully registered as the proprietor of the leasehold interest as evidenced in grant C.R No. 51725.
48. It was further averred that prior to being registered as the proprietor of the leasehold interest in grant No. 51725 the 6th Defendant complied with the conditions of the extension. It was stated that the 6th Defendant lawfully held its title and lawfully disposed of the same to the 7th Defendant.
49. The 6th Defendant also objected to the jurisdiction of this court from hearing the Plaintiff's claim on the grounds that the same was an historical injustice claim which ought to have been addressed by the 2nd Defendant.
50. During trial, Shakil Visram Mohamed Hussein, DW1 testified on its behalf. He adopted and relied on his statement and bundle of documents dated 7th December 2022 in his evidence in chief. It was his testimony that the property was acquired in 1947, lease extended and the property later sold in 2012.
51. On cross-examination by Learned Counsel Mr. Mbugua he stated that the lease was acquired in 1947, it expired in 2022 an extension was given in 2010 and the same was sold in 2012.
52. On cross examination by Learned Counsel Aboubakar, he stated that the original lease was for 99 years and was to expire in 2022. The transfer was done on 6th August 1947. He also stated that he had not produced the Land Control Board consent. The surrender was for a specific portion and not the whole land. The land was sold in 2012.
53. On cross-examination by Learned Counsel Kiti for the 5th Defendant he stated that the application for extension of the grant was made in December 2009 at that time the grant had been subject to several subdivisions.
54. He also stated that he had not tendered any approvals for subdivision. He was aware of the surrender conditions. He did not see any condition on approval from Municipal Council of Voi. He was not aware of any documentation that was tendered for purposes of seeking an extension. He was not aware of any requirement of attaching minutes from Voi Municipal Council by then. The extension was granted in respect to L.R No. 4637.



55. On further cross-examination he also stated that he was not among the Directors who executed the transfer. He did not have the sale agreement. He did not have the consent from Land Control Board in court. He had not tendered a copy confirming payment of stamp duty.
56. When re-examined, he stated that he had not been born as at 1947. There was an extension of lease. The surrender was proof of compliance to the extension. There was also Condition no. 2 which was on payment of enhanced rent.
57. The requirement of consent from Municipal Council of Voi was not listed as one of the conditions. They were to surrender the existing title before getting a new one. They never appeared before the Senate Committee.

The case of the 8th Defendant

58. The 8th Defendant filed a Statement of Defence dated 18th November 2021.
59. The 8th Defendant pleaded that the suit is defective for non compliance with Section 4(1)(a) and 7 of the *Limitation of Actions act* and that the Plaintiff's lack locus standi.
60. It was also averred that the 8th Defendant purchased the property from the 7th Defendant vide a sale agreement dated 13th December 2018. It was averred that the 8th Defendant did due diligence prior to purchase.
61. It was also averred that it applied for a facility with the 9th Defendant and the same was approved as follows; a term loan facility of Kshs. 4,000,000,000/= and further Kshs. 800,000,000/= The same was approved and a letter of offer issued on 21st December 2018. The letter of offer had several conditions.
62. It was also averred that the 8th defendant obtained consent from the Land Control Board before purchase from the 7th Defendant and a consent to charge the suit property to the 9th Defendant was also obtained.
63. During trial, Mohamed Ali Madhani, DW2 testified on its behalf. He relied and adopted his witness statement and bundle of documents that were on received. He added that National Land Commission and DCI had confirmed that the suit property is private property.
64. When cross-examined by Learned Counsel Mr. Makuto he stated that the surrender was for a small portion, the transfer to Voi Plantations Limited was dated 23rd February 2012.
65. Upon cross-examination by Learned Counsel Mr. Ole Kina for 9th Defendant he stated that all the previous charges to the property were discharged and the same was free from any encumbrances.
66. On cross-examination by Learned Counsel Mr. Aboubakar for the Plaintiff he stated that he had not seen the application for consent. There was a consent from the Ministry and another one from the County Government. They did not give any reason for the sub division.
67. When cross examined by Learned Counsel Mr. Kiti for the 5th Defendant, he stated that he executed the agreement on 13th December 2018. The company had not been registered as per that date. The facility was approved on 21st December 2018 being 7 days after the incorporation of the company. The transfer was executed on 31st January 2019. The application for consent indicated that the purchase price was Kshs. 1,002,000,000/= Billion. The agreement was for a consideration of Kshs. 4,000,000,000/= Billion.
68. When re-examined, he stated that the CR 12 filed by the Plaintiff was not part of his documents. It was addressed to Micheal Mwawasi who is not known to him. The company was in existence at the



time of the sale agreement. The person known as Nazlin was the same person as shown on page 20 of their bundle of documents. Kamau Muruiki Advocate witnessed the agreement. The transfer was signed on 31st January 2019.

The case of the 9th Defendant

69. The 9th Defendant filed a written Statement of Defence dated 21st March 2022. It was averred that the Plaintiff has never owned the suit property. The 8th Defendant has a valid title. The 9th Defendant duly registered valid charges. The 9th Defendant also objected to the jurisdiction of this court.
70. During trial, Faith Ndonga, DW4 testified on its behalf. She relied on her witness statement and bundle of documents dated 19th February 2024 in her evidence in chief.
71. When cross examined by Learned Counsel Mr. Makuto she stated that the bank did due diligence prior to charging the property.
72. On cross examination by Learned Counsel Mr. Kiti for the 5th Defendant, she stated that the bank did due diligence. The bank obtained a search. She did not know when the 8th Defendant was incorporated. She did not have a valuation report in court even though the property was valued. She was not aware of any subdivisions.
73. Upon cross examination by Learned Counsel Mr. Abubakar for the Plaintiff, she stated that the due diligence involved conducting a search. The charge document had not been produced in court. The same had some conditions.
74. She also stated that it is not strange to apply and obtain a transfer and register a charge on the same day.
75. When re-examined, she stated that their bank was satisfied with the security it had received before approving the facility. She also stated that the original title was being held at the bank.

The Plaintiff's submissions

76. The Plaintiff filed written submissions dated 8th January 2025, Counsel submitted that the first lease was granted in 1920 and the lease being challenged herein was granted on 23rd February 2011. The applicable law at that time was the Government *Land Act* which commenced on 18th May 1915 and repealed on 2nd May 2012 and the Registration of Titles Act which was also repealed on 2nd May 2012.
77. It was submitted that the process of allocation or disposal of Government Land for agricultural purposes is laid down under Part IV, Section 19 to 26 of the Government *Land Act*. The said process was not followed in granting the lease to the 6th Defendant herein thus rendering the grant illegal ab initio.
78. It was also submitted that despite the illegal grant of the lease to Voi Sisal Estates Limited, the 6th Defendant herein transferred the lease to Voi Plantation Limited on 23rd February 2012.
79. It was also submitted that sometime on 2nd November 1987 the 6th defendant surrendered L.R No. 4637/5 to the Government as shown in Entry No. 24 appearing at page 10 of the 6th Defendant's List of Documents. The entry depicts that the original L.R No. 4637 and registered as C.R. 8814 had been subdivided and a portion thereof surrendered.
80. It was contended that there is no application for consent to the Commissioner of Land for the said subdivision, there is no consent produced in court for the said subdivisions therefore the same were



- illegal as the subdivision that led to the surrender of 2nd November 1987 was done in contravention of Section 42 of the Registration of Titles Act.
81. Similarly, on 8th June 1993 the 6th Defendant surrendered portion No. 4637/3/4 to the Government of Kenya. According to the Plaintiff, this is a further proof of the prior illegal subdivision of the original leased land to the company and acquired by the 6th Defendant.
 82. It was further submitted that on 9th March 2007 the 6th Defendant surrendered L.R No. 4637/8 to the Government of Kenya. The effect of such a surrender is the determination of the lease as is stated in Section 43 and 44 of the Registration of Titles Act.
 83. It was contended that a lessee who surrenders a lease and wishes to be reallocated the land again has to re-apply and follow the process provided by the Government Land Act (Sections 19 to 26 thereof). The lessee cannot re-acquire the same government land by an application for extension of a lease. There is no provision either in the Government Land Act or in the Registration of Titles Act entertaining an application for extension of a lease.
 84. It was further contended that even if there was such a procedure, the extension would be of the original lease for the same L.R. Number and registered the same C.R Number with the same size or acreage. The grant of the lease to the 6th Defendant registered on 23rd February 2011 for L.R No. 28683 and registered as C.R No. 51725 for 1953 hectares (4825.9 acres) cannot be an extension but a grant of a new lease.
 85. The Plaintiff argued that the new lease was granted in contravention of the provisions of Section 19 to 26 of the Government Land Act and was therefore illegal, null and void.
 86. It was contended that the 6th defendant transferred the suit property to the 7th Defendant, Voi Plantation Limited on 23rd February 2012. The 6th Defendant did not produce a consent from the Commissioner of Land approving the transfer of the suit property to the 7th Defendant and that this was a further illegality as the transfer was done in breach of special condition number 3 contained in the Grant of the Lease which condition states that:

“ The Grantee shall not sell, transfer, sublet, charge or subdivide the land or any part thereof without prior written consent of the Commissioner of Land and the Land Control Board.”
 87. The Plaintiff submitted that the 9th Defendant aided and abated the illegal acquisition of the suit property by the 8th Defendant. It offered financial facility to the 8th Defendant without conducting due diligence as is required by law.
 88. Counsel submitted that the Plaintiff was registered purposely to engage on agricultural activities. Its members are residents within the suit property and most of whom were forcibly and illegally evicted from the suit property. They were aware the original lease was expiring on 2019 and they had intended to apply to be allocated the land to carry out their intended farming activities. They being residents and having suffered historical injustice in the past they had a legitimate expectation of being granted the lease particularly considering the states obligation under Article 43 of the Constitution, its Vision 2030 and its commitment to the United Nations SDG's. They thus have a genuine interest in the suit property and are therefore entitled to the prayers sought in its plaint.
 89. The court was urged to grant the reliefs sought in the plaint.



The 5th defendant's submissions

90. The 5th Defendant filed written submissions dated 7th February 2025. Counsel began his submissions by outlining the facts of the case and submitted on the following issues:-
- i. Whether the registration of the 8th Defendant as the proprietor of the Lease Title CR No. 51725 being L.R No. 28683 is regular.
 - ii. Flowing from the above, what orders should therefore issue.
 - iii. Who should bear the costs of the suit.
91. It was submitted that the 6th Defendant through its witness Shakil Visram Mohamed Hussein testified in court on the 15th October 2024 that it acquired its interest in the larger Grant CR No. 8814 being LR No. 4637 on the 6th August 1947.
92. Before the lapse of the term of 99 years, the 6th Defendant on the 4th December 2009 applied for an extension of lease which was approved by the Commissioner of Lands vide a Letter dated 23rd April 2010. Among others, it was a condition precedent that the 6th defendant surrenders the existing Lease Title CR No. 8814 being LR No. 4637 in exchange of a new one.
93. It was argued that upon surrender of its interest in Lease Title CR No. 8814 being L.R No. 4637 on the 3rd March 2011 the 6th Defendant was issued with a new Lease Title CR no. 51725 being LR No. 28683 measuring 1953 hectares.
94. It was argued that Lease Title CR No. 8814 being L.R No. 4637 was already subjected to several subdivisions with some portions thereof surrendered to the Government and thus the extension of Lease in respect to Lease Title No. 8814 being LR No. 4637 could not ensue since the substratum had already been determined.
95. It was further submitted that the Lease in respect to the suit property issued to the 6th Defendant was subject to Special Conditions which include among others that the land shall be used for agricultural purposes and residence of the Grantee and further, that the Grantee shall not sell, transfer, sublet, charge or subdivide the land or any part thereof without prior written consent of the Commissioner of Lands and the Land Control Board.
96. According to the 5th Defendant, the lease title was subject to a special condition that, if the land or any part thereof should cease to be used for agricultural purposes, the land or any part thereof shall be deemed to have automatically reverted to the Government of Kenya without the necessity of any formal surrender thereof and the term hereby created shall de facto determine in respect of the land or the part as the case may be.
97. Counsel submitted that, the 6th Defendant had no power to transfer the suit property to a Third Party without prior written consent of the Commissioner of Lands and the Land Control Board.
98. No evidence was presented by the 6th Defendant showing that the written consent of the Commissioner of Lands and the Land Control Board were sought and granted pursuant to the special conditions to enable the 6th Defendant alienate the suit property and effect a transfer in favour of the 7th Defendant.
99. In that regard, the 6th Defendant was in breach of the special conditions in respect to the suit property when it effected a transfer in favour of the 7th Defendant.



100. It was also submitted that this chain of illegality continued with respect to the 7th Defendant who alienated and effected transfer of the suit property in favour of the 8th Defendant.
101. According to the 5th Defendant, the transfer of the 8th Defendant was in itself marred with illegalities. Firstly, the Sale Agreement in respect to suit property was executed on the 13th December 2018. However, the same was neither attested nor witnessed despite the consideration thereof being a substantial amount of Kshs. 4,000,000,000/=. Secondly it is indicated that the 8th Defendant was in existence at the time of the sale agreement when in actual fact the 8th Defendant was registered with the Registrar of Companies on the 14th December 2018.
102. Consequently, as at the time of the sale agreement the 8th Defendant had no privity of contract owing to its non-existence.
103. Thirdly, the transfer which actually is the instrument that conveys the interest in the suit property to the 8th Defendant while it appears to have been assessed for Stamp Duty there was no corresponding Stamp Duty Valuation Form and proof of payment thereof. This position was confirmed by the Land Registrar who testified on the 19th November 2024 and upon cross examination conceded that Stamp Duty had been assessed at Kshs. 80,000,000/= but there was no proof of payment by way of a receipt to that effect.
104. Fourthly, the suit property was subjected to 28 subdivisions by the 8th Defendant and further converted its use from Agricultural land to Residential.
105. Similarly, no evidence in respect to the aforesaid subdivisions was presented by the 8th Defendant showing that the written consent of the Commissioner of Lands and the Land Control Board were sought and granted pursuant to said special conditions.
106. It was contended that the consent of the 5th Defendant herein County Government of Taita Taveta, bestowed with powers to approve County Development for purposes of Planning and Land Use was never sought.
107. According to the 5th Defendant, the history of these illegalities meant that the 8th Defendant never acquired any better title a position which is well settled by the principle of “nemo dat quod non habet” which provides that no one can give a better title that they do not have.
108. It was also submitted that the 8th Defendant cannot be considered a bonafide purchaser for value.
109. Citing Article 62(1) of *the Constitution*, it was also submitted that the suit property is public land.
110. The 5th Defendant concluded its submissions by urging the court to find that the title of the 8th Defendant did not meet the legal compliance of a good title and impeach the same.

The 6th Defendant’s submissions

111. The 6th Defendant submitted on the following issues:-
 - i. Is this a historical land injustice claim and should this Honourable Court down its tools?
 - ii. Does the Plaintiff have the requisite locus standi to file this suit?
 - iii. Did the suit property ever become land at any point in time?
 - iv. Was the 6th Defendant’s acquisition and ownership of the suit property lawful?
 - v. Has the Plaintiff proved its case on a balance of probabilities?



- vi. What orders should issue?
112. It was argued that the Plaintiff does not have the locus standi and the court does not have jurisdiction to entertain its claim. The provisions of Article 67 (2)(e) of *the Constitution* and Section 15(1) of the National Land Commission were cited in support together with several other cases.
113. On whether the 6th Defendant's acquisition of the suit property was lawful. It was submitted that the 6th Defendant acquired CR 8814 in 1947 and this fact was corroborated by the Land Registrar Sheila Soita when she gave her testimony.
114. It was submitted that the Land Registrar also confirmed that the 6th Defendant surrendered CR 8814 on 25th March 2011 which surrender, was one of the conditions of extension of lease imposed by the lessor through the letter dated 23rd April 2010.
115. As at the date of surrender of CR 8814 on 25th March 2011 the 99 year lease given to the first leasehold proprietor in 1938 and transferred to the 6th Defendant in 1947 had not expired. The same was for 99 years from 1st January 1923 and was to expire on 1st January 2022.
116. It was further submitted that 6th Defendant's witness and director Shakil Visram who testified twice in this matter stated that the 6th defendant complied with each of the conditions of extension of lease imposed by the lessor as set out in the letter dated 23rd April 2010 including payment of enhance annual rent, payment of surrender and new grant fees, payment of approval fees and preparation of a new deed plan by the department of surveys.
117. The 6th Defendant was then issued with grant CR 51725 which was registered on 25th March 2011 on the same day as the instrument of surrender of CR/8814.
118. It was also submitted that no particulars of the 6th Defendant's said illegality, wrongfulness or unlawfulness have been set out in the said plaint. But that notwithstanding the Plaintiff has not pleaded that the 6th Defendant acquired its leasehold interest through fraud or misrepresentation to which it has been proved that the 6th Defendant was a party.
119. The 6th Defendant's acquisition and ownership of the suit property being LR No. 28683 as comprised in grant CR 51725 was pursuant to conditions of extension of lease provided by the lessor which were complied with fully by the 6th Defendant and therefore the same was lawful.
120. Counsel also submitted that the Plaintiff's case has not been proved to the required standard and the court was urged to dismiss the suit with costs.

The 8th Defendant's submissions

121. The 8th Defendant filed written submissions dated 21st January 2025. Counsel submitted on the following issues:-
- i. Whether the Plaintiff has the locus standi to institute this suit;
- ii. Whether the 8th defendant is the bonafide legal and registered owner of the suit property; and
- iii. Who ought to bear the costs of this suit?
122. It was argued that the Plaintiff cannot be a representative of the residents of Mkamenyi village in any way since the Plaintiff brought this suit in its own name and thus the Plaintiff cannot prosecute this suit on its behalf or on behalf of the residents of Mkamenyi having failed to bring a nexus between it and the alleged residents of Mkamenyi.



123. On this issue, it was further submitted that the Plaintiff has not proven that it owns the suit property. The Plaintiff has not adduced before the court the alleged list of its members. Apart from the two witnesses who testified as the Plaintiff's officials there is no list of members adduced to demonstrate that the Plaintiff indeed has members who comprise the residents of Mkamenyi. The said members ought to have acquired the right to appear before the court.
124. It was argued that while the Plaintiff alleged that its members comprise of the descendants of those who had the legitimate interest in the property there was no evidence of any of the Plaintiff's members possessing grants of representation to grant them in capacity to sue.
125. On whether the 8th Defendant is a bonafide purchaser for value, it was submitted that:-
- i. Pursuant to the terms of a sale agreement dated 13th December 2018 (Exhibit 1), the 8th Defendant entered into an agreement with the 7th Defendant herein for the purchase of the suit property.
 - ii. Upon execution of the sale agreement, the 8th Defendant utilized the completion period to undertake extensive due diligence with the view of establishing the ownership history of the suit property.
 - iii. As part of due diligence, the 8th Defendant conducted a search with the 1st Defendant where it established that indeed the suit property was at the time registered in the name of the 7th Defendant and that it was charged in favour of the 9th Defendant (Exhibit 2).
 - iv. The 8th Defendant further sought to know about the 7th Defendant's shareholding and directorship by conducting a search at the companies registry to establish the directors of the 7th Defendant where it established that the directors were Nazlin Aminmohamed Nathoo and Reshma Rohit Shah (Exhibit 3).
 - v. In addition to the above, the 8th defendant conducted a historical search into the suit property and obtained records showing the previous ownership of the suit property which revealed that the original title was Land Reference Number 4637 consisting of 5006 acres and was issued in the year 1923 for a term of 99 years from 1st January 1923 to 1st January 2023.
 - vi. Subsequently the title to the suit property was transferred to the 6th Defendant on 4th July 1944 where the said company remained as the registered owner until or about 23rd February 2012 (Exhibit 4).
 - vii. According to the said records, the suit property was subsequently transferred to the 7th Defendant on 23rd February 2012 and a legal charge over the suit property was registered simultaneously with the said transfer in favour of the 9th Defendant severally on the 23rd February 2012 and 29th December 2017 (Exhibit 5).
 - viii. Thereafter the 8th Defendant obtained the approval and/or consent of the Land Control Board at Voi for the sale and transfer of the suit property from the 7th Defendant to it (Exhibit 7).
 - ix. In addition, the Company obtained the approval and/or consent to charge the suit property in favour of the 9th Defendant (Exhibit 8).
126. It was also submitted that the information above gave the 8th Defendant the comfort of proceeding with the transaction since there was sufficient material to demonstrate that the 7th Defendant being the Vendor/Transferor was the duly registered owner of the suit property and how the suit property had come into its possession from Voi Sisal Estates Limited.



127. It was further submitted that from the records availed to the 8th Defendant, both from the National Government, County Government as well as the companies registry, there was no single mention of the Plaintiff or its members having an interest over the suit property. Thus being clear that the Plaintiff herein has never been an owner of the suit property herein since the 8th Defendant is the one which possesses a valid title to the suit property as set out in Grant No. CR 51725 dated 23rd February 2011 and the Certificate of Postal search dated 13th February 2019 and falls squarely within the definition of a bonafide purchaser.
128. It was also submitted that by dint of the said lease dated 14th September 1938 and registered on 17th September 1938 as presentation number 898/38 at the Registry of Titles at Mombasa, the suit property had already been surveyed, alienated and allotted to the initial allottee – British East Africa Corporation Limited pursuant to the provisions of the repealed Government *Land act*. It therefore ceased to be unalienated Government land.
129. It was argued that the suggestion that the suit property ought to have undergone the process outlined under Section 21 – 26 of the repealed Governments *Land act* is not only legally flawed but a gross misinterpretation of the said sections of that statute. The transfer of the remainder of the lease over the suit property to Voi Sisal Estates Limited was therefore legal and cannot be impeached in the manner the Plaintiff is purporting to.
130. The court was urged to dismiss the suit with costs.

The 9th Defendant’s submissions

131. The 9th Defendant filed written submissions dated 30th January 2025. Counsel equally submitted that the Plaintiff lacked locus standi to file the suit and its claim was not properly before this court. The court was urged to dismiss the suit with costs.

Analysis and Determination

132. The court has considered the pleadings filed by the parties, the oral and documentary evidence tendered together with the written submissions filed by Counsel for the parties. The parties herein did not agree on the issues for determination by this court. In their respective submissions which the court has duly considered, each party framed its own issues. From the pleadings filed, evidence adduced and written submissions presented to this court by the parties, the following issues stand out for determination by this court:-
- i. Whether the Plaintiff has locus to institute the suit herein and further whether its claim is properly before this court.
 - ii. Whether the 8th Defendant lawfully acquired the suit property herein.
 - iii. Whether the Plaintiff has proved its case to be required standi.
 - iv. Whether the Plaintiff is entitled to the reliefs sought.

Issue No. (i) Whether the Plaintiff has locus to institute the suit herein and further whether its claim is properly before court

133. The 6th, 8th and 9th Defendants submitted that the Plaintiff did not have the locus standi to file the instant suit and further that its claim was not properly before this court.



134. It was argued that the rights of the 3,000 members of the Plaintiff claiming that their forefathers' rights to the suit property were violated is distant and separate from that of the Plaintiff which could not possibly have occupied the land or had a forefather.
135. It was also submitted that the Plaintiff being a body corporate capable of suing and being sued in its own move has not stated how it acquired an interest in the suit property and that the Plaintiff has not laid a basis of the said interest. It was also submitted that the Plaintiff has not pleaded such interest and neither can the said interest be deduced from the contents and the spirit therein.
136. It was further submitted that the Plaintiff cannot be a representative of the resident of Mkamenyi Village in any way or the other since the Plaintiff brought this suit in its own name.
137. On whether the Plaintiff's claim is properly before this court the 6th, 8th and 9th Defendants submitted that the Plaintiff's claim is premised and anchored upon the Plaintiff's view that there were historical injustices that resulted in their marginalization and disentitlement of the land and as such the same ought to be addressed by the National Land Commission as stipulated under Article 67(2)(e) of *the Constitution* and Section 15(1) of the *National Land Commission Act*. The case of Muthoni & 130 Others =Versus= National Land Commission & 3 Others; Del Monte Corporation (Interested Party) (Constitutional Petition No. E003 of 2022) (2023) KEELC 16053 (KLR) (23 February 2023 (Ruling) was cited in support.
138. The Plaintiff did not submit on this issue.
139. Locus standi is the cornerstone of any case. Before a party files a case, he or she must be certain that they are clothed with the requisite capacity to sue and be sued. In the case of BV Law society of Kenya vs Commissioner of Lands and Others, Nakuru High Court, Civil Case No. 464 of 2000. It was held that:
- “If a party has no locus standi, then the said party cannot bring a suit to court. The issue of locus standi goes to the root of any suit and the said issue of locus standi is a point of law which is capable of disposing of a matter preliminarily.”
140. In Alfred Njau & Others v City Council of Nairobi [1982-88] 1 KAR 229 the Court of Appeal gave meaning to the term locus-standi by stating:
- “...to say he has no locus standi means he cannot be heard, even on whether or not he has a case worth listening to.”
141. The Court of Appeal authoritatively delivered itself on the issue of locus standi in Virginia Edith Wamboi Otieno v Joash Ochieng Ougo & Another (1982-99) 1 KAR, Morjaria v Abdalla [1984] KLR 490 to the effect that Locus standi is a primary point of law almost similar to that of jurisdiction and the lack of capacity to sue or be sued renders the suit incompetent.
142. In the instant case, the Plaintiff pleaded that it was formed for purposes of consolidating its members interest in defending and spearheading their joint and strategic historical interest in acquisition of the land for use in order to reduce their socio-economic needs particularly their shelter and farming needs. It was further averred that the Plaintiff is comprised of more than 3,000 members who are residents of Mkamenyi Village and that the members of the village have always resided in Mkamenyi village which is situate within the 1,953 hectares of what is known as LR No. 28683 being the suit property.
143. In view of the foregoing, it is the indeed evident that through the pleadings filed by the Plaintiff and the testimony tendered by the Plaintiff's witnesses during trial, it is the finding of this court that the



Plaintiff has the requisite locus to institute the said suit and the 6th, 8th and 9th objections to the same are misplaced.

144. On whether the court lacks jurisdiction to consider the Plaintiff's claim on the basis that the same is an historical land injustice grievance which ought to be determined by the National Land Commission, it is evident that the Plaintiff's claim seeks to challenge how the 6th Defendant acquired the said property and how the same was subsequently transferred to the 8th Defendant, the same is not specifically limited to "historical land injustice" but goes beyond the same and considering the jurisdiction of the ELC Court.

145. The broad jurisdiction of the Environment and Land Court is donated by Article 162 of *the Constitution* which establishes the three tiers of Kenya's Superior Courts. It provides thus:

1. The superior courts are the Supreme Court, the Court of Appeal, the High Court and the courts referred to in clause
2. Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to
 - a) employment and labour relations; and
 - b. The environment and the use and occupation of, and title to, land.
3. Parliament shall determine the jurisdiction and functions of the courts contemplated in clause (2)
4. The subordinate courts are the courts established under Article 169, or by Parliament in accordance with that Article.

146. In the discharge of the mandatory obligation placed on it by *the Constitution*, Parliament enacted the *Environment and Land Court Act* and set out in details, the jurisdiction of the Court. Section 13 of the Act outlines the jurisdiction of the court as follows:

13. Jurisdiction of the Court

1. The court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162(2)b of *the Constitution* and with the provisions of this Act or any other law applicable in Kenya relating to environment and land.
2. In exercise of its jurisdiction under Article 162(2)(b) of *the Constitution*, the Court shall have power to hear and determine disputes-
 - a. relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources.
 - b. relating to compulsory acquisition of land;
 - c. relating to land administration and management;
 - d. relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interest in land; and
 - e. any other dispute relating to environment and land.
3. Nothing in this Act shall preclude the Court from hearing and determining applications for redress of a denial, violation or infringement of, or threat to, rights or



fundamental freedom relating to a clean and health environment under Articles 42, 69 and 70 of *the Constitution*.

4. In addition to the matters referred to in subsections (1) and (2), the Court shall exercise appellate jurisdiction over the decisions of subordinate courts or local tribunals in respect of matters falling within the jurisdiction of the Court.
5. Deleted by *Act No. 12 of 2012*
6. Deleted by *Act No. 12 of 2012*
7. In exercise of its jurisdiction under this Act, the Court shall have power to make any order and grant any relief as the Court deems fit and just, including-
 - a. interim or permanent preservation orders including injunctions;
 - b. prerogative orders;
 - c. award of damages;
 - d. compensation;
 - e. specific performance;
 - f. restitution; or
 - g. declaration; or
 - h. costs

147. A plain reading of the above constitutional and statutory framework on the jurisdiction of the Environment and Land Court reveals that the Environment and Land Court which is the court contemplated under Article 162(2)(b) of *the Constitution*, has a broad jurisdiction to hear and determine disputes relating to the environment and the use, occupation, and title to land. *The Constitution* donated powers to Parliament to legislate a legal framework elaborating on that broad constitutional framework. In so doing, Parliament at Section 13(7) of the *Environment and Land Court Act* empowered the Court to make any order or grant any relief as the Court deems fit and just.

148. It is not lost to me that, in its day to day adjudication of disputes relating to environment and the use and title to land, the Court is oftentimes confronted with disputes relating to ownership, use and occupation to land including rival allegations of fraudulent titles. It is expected that whenever the court is invited, in appropriate cases, it will be at liberty to exercise its jurisdiction under Section 13(7) of the *Environment and Land Court Act*.

149. Considering the nature of the dispute before this court and the reliefs sought by the Plaintiff I am therefore satisfied beyond doubt that under Section 13(7)(a) of the *Environment and Land Court Act*, the Plaintiff's claim is properly before this court.

Issue No. (ii) Whether the 8th Defendant lawfully acquired the suit property

150. The Plaintiff has challenged the manner in which the 8th Defendant acquired the suit parcel.

151. In considering this issue, the court must trace the root of title. This approach was well appreciated in the case of *Hubert L. Martin & 2 Others vs Margaret J. Kamar & 5 Others* [2016] eKLR. Equally in



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

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

152. This investigation must start at the root of the title and follow all processes and procedures that brought forth the interests of each party to the land. It follows that the title that is to be upheld is that which conformed 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 they need to demonstrate how they got their title starting with its root. No party should take it for granted that simply because they have a title deed or Certificate of Lease, then they have a right over the property. The other party also has a similar document and there is therefore no advantage in hinging one case solely on the title document that they hold. Every party must show that their title has a good foundation and passed properly to the current title holder. With the nature of case at hand, I will need to embark on investigating the chain of processes of the root of each title which a view of ascertaining who is the bonafide owner.

153. The Court of Appeal in the case of Jacob Wekesa Bokoko Balongo vs. Kincho Olokio Adeya & another [2020] eKLR held as follows on the importance of deciphering the historical acquisition of title:

“The historical background to the acquisition of the title is as good as the title itself. How else, for example, can a person seeking to impugn or impeach the title on the grounds of fraud, misrepresentation or it having been obtained unprocedurally or through corrupt means do so without placing the title in its historical context? On the ground of indefeasibility of title, it was urged that the trial judge erred in failing to find that the appellant’s title to the suit land was indefeasible... In the persuasive case of Fahiye & 2 others – v- Omar & 4 others [201] 2KLR, 224, it was held that indefeasibility of title is not absolute particularly where the whole transaction was void. In Milankumar Shah and 2 Others vs. City Council of Nairobi & Attorney General (Nairobi HCC Suit No. 1024 of 2005 (05), it was correctly pointed out that: “The concept of absolute and indefeasible ownership of land cannot be clothed with legal and constitutional protection if the interest was acquired through fraud, misrepresentation, illegality, unprocedural ways or corrupt schemes. This concept cannot be used to sanitize the commissioner if it allocates or issues title in such manner. In the case of Champaklal Ramji Shah & 3 Anors –v- AG & Anor, HCCC No. 145 of 1997, it was held that the court has a duty to examine the process of acquisition of such title and if it determines that there is an illegality, should nullify the titles as required.”

154. The apex court also shed light on the relevance of a historical background analysis insofar as acquisition of title is concerned restating that the ownership of land whose title was not acquired regularly is not protected under Article 40 of *the Constitution* on the protection of right to property. It held as follows in Dina Management Limited vs. County Government of Mombasa & 5 others (2023)eKLR;

“Where the registered proprietor’s root title was under challenge, it was not enough to dangle the instrument of title as proof of ownership. It was the instrument that was 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.”

155. Section 26 of the *Land Registration Act, Act No. 3 of 2012*, provides that a title which was acquired by way of fraud or misrepresentation, where a person is proved to be a party can be attacked. So too a title which was acquired illegally, procedurally or through a corrupt scheme. The said Section is drawn as follows: -

“26.

- (1) The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except—
 - (a) on the ground of fraud or misrepresentation to which the person is proved to be a party; or
 - (b) where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.
- (2) A certified copy of any registered instrument, signed by the Registrar and sealed with the Seal of the Registrar, shall be received in evidence in the same manner as the original.”

156. From the evidence that was tendered herein, the 6th Defendant demonstrated how it acquired the said property. It was evident that the 6th Defendant acquired its initial interest in a much larger parcel of land measuring 5006 acres as evidenced in a previous grant CR No. 8814. Its acquired interest was the remainder of a term of 99 years from 1st January 1923. Before the lapse of that term of 99 years, the 6th Defendant applied for an extension of lease and one of the conditions for the grant of the lease evidenced in CR No. 51725 was the surrender of the lease evidenced in grant C.R No. 8814.

157. From the evidence tendered on 3rd March 2011 the 6th Defendant surrendered its interest in grant C.R No. 8814 and was thereafter lawfully registered as the proprietor of the leasehold interest as evidenced in grant C.R No. 51725. It was further averred that prior to being registered as the proprietor of the leasehold interest in grant No. 51725 the 6th Defendant complied with the conditions of the extension. It was stated that the 6th Defendant lawfully held its title and lawfully disposed of the same to the 7th Defendant.

158. During trial, Sheila Soita, the Land Registrar equally confirmed that the 6th Defendant surrendered C.R 8814 on 25th March 2011 which surrender was one of the conditions of extension of lease imposed by the lesser though the letter dated 23rd April 2010.

159. As at the date of surrender of CR 8814 on 25th March 2011, the 99 year lease given to the first leasehold proprietor in 1938 and transferred to the 6th defendant in 1947 had not expired. The same was for 99 years from 1 January 1923 and was to expire on 1st January 2022.



160. The 6th Defendant's witness and director, Shakil Visram confirmed that the 6th Defendant complied with each of the conditions of extension of lease imposed by the lessor as set out in the letter dated 23rd April 2010 including payment of enhanced annual rent, payment of surrender and new grant fees, payment of approval fees and preparation of a new deed plan by the department of surveys.
161. The 6th Defendant was then issued with grant CR 51725 which was registered on 25th March 2011 on the same day as the instrument of surrender of CR 8814.
162. Hence therefore, the Plaintiffs were unable to prove any illegality and or fraud on the part of the 6th Defendant when it acquired the said property.
163. In respect to the 8th Defendant, the 8th Defendant also demonstrated how it acquired the said property from the 7th Defendant.
164. From the evidence tendered herein, the 8th Defendant's witness demonstrated on the part of due diligence it undertook prior to purchasing the said property.
165. As per Section 26 of the [Land Registration Act](#), a Certificate of title shall be taken by all Courts as prima facie evidence that the person named as proprietor of the land is an absolute and indefeasible owner unless cogent evidence has been shown for it to be impeached. See the case of Muikamba Kiranga & Another -vs- Faith Muthoni Marinya & 4 others [2020] eKLR.
166. The Plaintiff neither pleaded fraud on the part of the Defendants nor did it prove any fraudulent conduct on the part of the Defendants and as such, this Court cannot proceed to cancel the 8th Defendant's title in the manner sought by the Plaintiff.
167. In the circumstances it is the finding of this court that the Plaintiff has not proved and or demonstrated any fraud on the part of the 8th Defendant in respect to the acquisition of the said property and as such it is the finding of this court that the 8th Defendant lawfully acquired the same.

Issue No. (iii) Whether the Plaintiff's claim has been proved to the required standard

168. It is trite law that whoever alleges must prove. Section 107 (1) of the [Evidence Act](#), Cap 80 Laws of Kenya provides that:

‘Whoever desires any court to give judgment as to any legal right or liability dependant on the existence of facts which he asserts must prove that those facts exist.’
169. On evidentiary burden of proof, Sections 109 and 112 of the [Evidence Act](#) provide as follows:

“ 109. The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of the fact shall lie on any particular person.”

112. in civil proceedings, when any fact is especially within the knowledge of any party to those proceedings, the burden of proving or disproving the fact is upon him.”
170. The two provisions were dealt with in the case of Anne Wambui Ndiritu –vs- Joseph Kiprono Ropkoi & Another [2005] 1 EA 334, in which the Court of Appeal held that:

“ As a general proposition under Section 107 (1) of the [Evidence Act](#), Cap 80, the legal burden of proof lies upon the party who invokes the aid of the law and substantially asserts the



affirmative of the issue. There is however the evidential burden, that is, placed upon a party..... the burden of proving any particular fact which he desires the court to believe in its existence which is captured in Sections 109 and 112 of the Act.”

171. The court having addressed itself on the manner as to how the 8th Defendant acquired the said property and further having held that the same was lawfully acquired and its title cannot be impeached in any other manner save for under provisions of Section 26 of the *Land Registration Act*, 2012 and further having considered the totality of the weight of the evidence adduced, it is the finding of this court that the Plaintiff have failed to prove their suit to the required standard.

Issue No. (iv) Whether the Plaintiff is entitled to the reliefs sought

171. The Plaintiff sought for several reliefs as was stipulated in its plaint. However this court having arrived at its finding that the Plaintiff’s suit has not been proved to the required standard is unable to grant the said reliefs since there is no basis for granting the same.
172. This Court has also pronounced itself to the effect that having established that the 8th Defendant is the bona fide owner of the suit property, there is no other way that this Court can take away without evidence that it was unlawfully acquired. Therefore, it follows that the Plaintiff has failed on a balance of probability to establish that it is deserving of the reliefs sought in its claim. This Court shall proceed to dismiss the Plaintiff’s suit.
173. In respect to costs, it is noteworthy that this Court retains the discretionary rights on award of costs. Considering the circumstances relating to the suit herein, this Court shall exercise its discretion and direct that each party to bear own costs of the suit.

Conclusion

171. In conclusion, it is the finding of this court that the Plaintiff’s suit has not been proved to the required standard and the same is dismissed with an order that each party to bear own costs of the suit.

DATED, SIGNED AND DELIVERED VIRTUALLY AT VOI THIS 27TH DAY OF MARCH 2025.

E. K. WABWOTO

JUDGE

In the presence of:-

Mr. Aboubakar for the Plaintiff.

N/A for the 1st, 2nd, 3rd and 4th Defendants.

Mr. Kiti for 5th Defendant.

Ms. Ogeto h/b for Mr. Karega for the 6th Defendant.

Mr. Mbugua for the 8th Defendant.

Mr. Ole kina for the 9th Defendant.

Court Assistant: Mary Ngoira.

