



Mureithi & another v Mwangi & 3 others (Environment & Land Case 298 of 2019) [2025] KEELC 25 (KLR) (16 January 2025) (Judgment)

Neutral citation: [2025] KEELC 25 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 298 OF 2019**

**JO MBOYA, J
JANUARY 16, 2025**

BETWEEN

LEOPOLD PRUDENSIO MUREITHI 1ST PLAINTIFF

CONSOLATA WAMBUI MUREITHI 2ND PLAINTIFF

AND

HAWA NYAMBURA MWANGI 1ST DEFENDANT

EDWARD NJUGUNA KANGETHI 2ND DEFENDANT

THE CHIEF LAND REGISTRAR 3RD DEFENDANT

THE ATTORNEY GENERAL 4TH DEFENDANT

JUDGMENT

Introduction and Background

1. The Plaintiffs herein approached the court vide Plaint dated the 16th September 2019 and which Plaint was subsequently amended culminating into the amended Plaint dated the 14th June 2023. For good measure, the amended Plaint seeks the following reliefs;
 - i. A declaration that the Plaintiffs as joint tenants are the lawful proprietors of the suit property.
 - ii. A declaration that the 1st and 2nd Defendant obtained Nairobi/Block 99/257 measuring 0.2145 ha situated in Runda Estate Nairobi through fraud.
 - iii. A declaration that the Plaintiffs as joint tenants are the lawful owners of Nairobi/Block 99/257 measuring 0.2145 ha situated in Runda Estate Nairobi.



- iv. An order that the 3rd defendant rectifies the proprietor section of the register of Nairobi/Block 99/257 measuring 0.2145 ha situated in Runda Estate Nairobi by cancelling the name of the 1st defendant and replacing it with the name of the Plaintiffs as joint tenants.
 - v. A permanent injunction to issue restraining the 1st & 2nd Defendants by themselves, their agents or their servants or agents or otherwise howsoever from interfering with the suit property.
 - vi. Cost of this suit.
 - vii. Interest on (f) at court rates.
 - viii. Any other relief that this honourable court may deem fit and just to grant.
2. Upon being served with the Plaint and summons to enter appearance, the 1st Defendant herein duly entered appearance and thereafter filed a statement of defence dated the 26th April 2022. Nevertheless, the statement of defence under reference was subsequently amended and re-amended. Suffice it to state that the further amended statement of defence is dated the 9th August 2023.
 3. Vide the further amended statement of defence, the 1st Defendant has denied the claims by the Plaintiffs. Furthermore, it has been contended that L.R No. Nairobi/Block 99/257 [the suit property] belongs to the 1st Defendant. In any event, it has been averred that the certificate of title, if any, borne by the Plaintiff herein was procured by fraud.
 4. The 2nd Defendant entered appearance and filed a statement of defence and counterclaim. The statement of defence and counterclaim is dated the 15th September 2023.
 5. The counterclaim by the 2nd Defendant seeks the following reliefs;
 - i. Declaration that the certificate of lease issued to and bearing the names of the 1 and 2nd Defendants to the counterclaim over and in respect of L.R No. Nairobi/Block 99/257 is illegal, unlawful and void.
 - ii. Cancellation, revocation and/or nullification of the impugned certificate of lease held by the 1st and 2nd Defendants to the counterclaim.
 - iii. Declaration that the counter-claimant is the lawful and legitimate proprietor of the suit property on account of being a bona fide purchaser for value without notice of any defect of any default in the predecessor's title.
 - iv. A permanent injunction to restrain the 1st and 2nd Defendants to the counterclaim from entering upon, remaining on or otherwise interfering with the counter-claimant's interests over and in respect of the suit property.
 - v. An order of eviction, (where appropriate), the 1 and 2nd Defendants to the counterclaim from the suit property; together with their employees, agents and/or servants, if any.
 - vi. Mesne profits
 - vii. General damages for trespass.
 - viii. Interests on (f) and (g) at court rates.
 - ix. Costs of the suit
 - x. Such further or other relief as the honorable court may deem fit, just to grant



6. The 3rd and 4th Defendants similarly entered appearance and filed a statement of defence. Nevertheless, the 3rd and 4th Defendants neither filed a list of witnesses nor witness statements. In addition, the 3rd and 4th Defendants did not file any list and bundle of documents.
7. The pleadings herein closed and upon the closure of pleadings, the subject matter was set down for case conference. Notably, the parties intimated to the court that same [parties] had filed the requisite pleadings, list and bundle of documents and the relevant witness statements. In this regard, the parties confirmed that the matter was ready for hearing.

Evidence by the Parties:

a. Plaintiffs' Case:

8. The Plaintiffs case is premised on the evidence of one witness, namely, Prof. Leopold Prudential Mureithi. Same testified as PW1.
9. It was the testimony of the witness [PW1] that same is the 1st Plaintiff herein. Besides, the witness averred that the 2nd Plaintiff is his [witness] wife. In addition, the witness averred that by virtue of being the 1st Plaintiff herein same [witness] is conversant with the facts of the case.
10. Additionally, the witness averred that same has since recorded a witness statement outlining the facts of the case. In this regard, the witness adverted to the witness statement dated the 6th May 2021. Instructively, the witness thereafter sought to adopt and rely on the contents of the witness statement.
11. Suffice it to state that the witness statement dated the 6th May 2021 was thereafter adopted and constituted as the evidence in chief of the witness.
12. Furthermore, the witness intimated to the court that the 2nd Plaintiff and himself [witness] have also filed a list and bundle of documents. To this end, the witness alluded to the list of documents dated the 14th October 2022 and thereafter sought to tender and produce the documents enumerated thereunder. There being no objection to the production of the documents; same [documents] were tendered and produced as Exhibits P1 to P12, respectively.
13. On the other hand, the witness also adverted to the amended Plaint dated the 14th June 2023; and the verifying affidavit annexed thereto. To this end, the witness invited the court to adopt and rely on the contents of the amended Plaint and thereafter to grant the reliefs thereunder.
14. On cross examination by learned counsel for the 1st Defendant, the witness averred that the 2nd Plaintiff and himself purchased the property from the original owners. It was the further testimony of the witness that the property was pointed out to the 2nd Plaintiff and himself by Mr. Samson Mureithi, who was previously the registered owner of the suit property, before the property was sold to the vendors at the foot of the sale that underpins the suit herein.
15. Whilst under further cross examination, the witness averred that the suit property was purchased from the vendors. However, the witness stated that same did not personally meet the vendors. Nevertheless, it was the testimony of the witness that the vendors had constituted their advocates as their attorney and that their transaction was entered into with the duly constituted attorney of the vendors.
16. It was the further testimony of the witness that prior to purchasing the suit property same [witness] was taken to the suit property by Samson Mureithi. Furthermore, the witness stated that when he [witness] visited the suit property there were no structure thereon.



17. Additionally, it was the testimony of the witness that the suit property was subsequently transferred and registered in the names of the 2nd Plaintiff and himself. In this regard, the witness has averred that same has tendered and produced before the court a copy of the transfer instrument that was duly registered.
18. It was the further testimony of the witness that the transaction between the 2nd Plaintiff, himself [witness] and the vendors was reduced into writing. In this regard, the witness averred that there was a sale agreement.
19. Other than the foregoing, it was the testimony of the witness that the transfer instrument which same has tendered and presented to the court was presented to the Land Registrar and was indeed registered. In addition, the witness averred that upon the registration of the transfer instrument, the 2nd Plaintiff and himself were duly issued with a certificate of lease.
20. Whilst still under cross examination, the witness averred that even though the sale agreement and the transfer instrument was executed by an attorney on behalf of the vendors same [witness] has not produced a copy of the power of attorney before the court.
21. On cross examination by learned counsel for the 2nd Defendant, the witness averred that the 2nd Plaintiff and himself bought the suit property from Kapila and Prit. Furthermore, the witness averred that upon the transfer and registration of the suit property to the 2nd Plaintiff and himself, same were issued with original certificate of lease. To this end, the witness averred that the original documents including the certificate of lease are before the court.
22. It was the further testimony of the witness that before same [witness] purchased the suit property, he [witness] undertook an official search in respect thereof.
23. On cross examination by learned counsel for the 3rd and 4th Defendants, it was the testimony of the witness that the due diligence which same took included obtaining a certificate of official search and visiting the suit property. In any event, the witness averred that when same visited the suit property there was no one in occupation thereof.
24. It was the further testimony of the witness that the transaction relating to the sale/purchase of the suit property was handled by his advocates. In particular, the witness averred that it is the advocates who undertook the official search and thereafter participated in the process including the presentation of the transfer instrument for registration.
25. It was the further testimony of the witness that same [witness] got to know of the availability of the land in question through one, namely, Samson Mureithi. In any event, the witness added that it is the said Samson Mureithi who took him [witness] to the suit property for purposes of inspection [physical search].
26. Whilst under further cross examination, the witness averred that he [witness] discovered the fraud in the year 2020. In particular, the witness stated that the fraud was discovered when he [witness] sought to pay the land rates at the city county of Nairobi. The witness added that it is at the time when the name of the 1st Defendant popped up as the owner of the property.
27. It was the further testimony of the witness that upon the discovery of the fraud, same [witness] reported the incident to the directorate of criminal investigation [DCI]. Nevertheless, the witness added that he has not been informed of the outcome of the investigations.
28. On re-examination, the witness averred that the transfer instrument between the vendor and himself was duly executed and thereafter registered at the Land registry. Furthermore, the witness added that



the name of the Land registrar who acted on the transfer instrument has been shown/reflected at the foot of the instrument.

29. Whilst still under re-examination, the witness averred that the purchase price towards the acquisition of the suit property were remitted vide cheques. In this regard, the witness pointed out that the cheques in question have been duly tendered and produced before the court.
30. It was the further testimony of the witness that the cheques towards and on account of the purchase price were duly acknowledged and receipted on behalf of the vendor. To this end, the witness referenced the various receipts tendered before the court.
31. Additionally, it was the testimony of the witness that upon purchase of the suit property same [suit property] has been under the occupation of the 2nd Plaintiff and himself. For good measure, the witness averred that the 1st Defendant has never occupied the suit property.
32. With the foregoing testimony, the Plaintiff's case was duly closed.

b. 1st Defendant's Case:

33. The 1st Defendant's case revolves around the evidence of one witness, namely, Richard Ombui. Same testified as DW1.
34. It was the testimony of the witness [DW1] that same is a holder of a general power of attorney donated by the 1st Defendant. In addition, the witness averred that the power of attorney in question has been duly registered at the Land registry. In this regard, the witness averred that same [witness] is therefore authorized and mandated to attend court and act on behalf of 1st Defendant.
35. It was the further testimony of the witness that same is conversant with the facts of this matter. In this regard, the witness averred that same [witness] has since recorded a witness statement dated the 13th September 2023 and which statement the witness sought to adopt and rely on as his evidence in chief. Suffice it to state that the witness statement under reference was duly adopted and constituted as the evidence in chief on behalf of the witness.
36. Additionally, the witness adverted to the list and bundle of documents dated the 13th September 2023. In this regard, the witness sought to tender and produce the said documents.
37. Nevertheless, learned counsel for the Plaintiffs raised an objection pertaining to the admissibility of the documents at the foot of the list and bundle of documents dated the 13th September 2023. In particular, learned counsel for the Plaintiff contended that the sale agreements dated the 25th January 1995 and 15th January 2018 could only be tendered and produced before the court by the makers thereof or the attesting witness. However, the objection by learned counsel for the Plaintiff's was overruled by the court.
38. Suffice it to state that the documents at the foot of the list dated the 13th September 2023 were thereafter tendered and produced as exhibits. For coherence, same were produced as exhibits D1 to D3, respectively.
39. It was the further testimony of the witness that the suit property lawfully belonged to the 1st Defendant. Nevertheless, the witness clarified that the suit property has since been sold and transferred to the 2nd Defendant.
40. On cross examination by learned counsel for the 2nd Defendant, the witness averred that same is before the court as a holder of a general power of attorney. In addition, the witness averred that the power of



attorney was donated by the 1st Defendant. In this regard, the witness testified that same is therefore authorized to appear before the Court on behalf of the 1st Defendant.

41. Whilst still under cross examination, the witness averred that the suit property has since been sold and transferred to the 2nd Defendant. To this end, the witness referenced exhibit D3, namely, the sale agreement between the 1st Defendant and the 2nd Defendant.
42. On being being cross examined by learned counsel for the 2nd Defendant, the witness averred that same [witness] has not availed a copy of the transfer instrument before the court.
43. It was the further testimony of the witness that the suit property was duly registered in then name of the 1st Defendant. In this regard, the witness reiterated that the 1st Defendant was the lawful owner of the suit property.
44. On the other hand, the witness averred that the 2nd Defendant herein is a purchaser of the suit property. In this regard, the witness testified that it is the 2nd Defendant who currently owns the suit property.
45. On cross examination by learned counsel for the Plaintiffs, the witness averred that same is a holder of a general power of attorney. In particular, the witness averred that the power of attorney was donated by the 1st Defendant.
46. Whilst under further cross examination, the witness averred that even though same [witness] has stated that the 1st Defendant purchased the suit property same has not availed evidence of how the 1st Defendant purchased the property. In particular, the witness averred that same has not tendered any evidence to show the movement of money.
47. Upon being shown the transfer instrument bearing the names of the Plaintiffs, the witness stated that same [witness] cannot confirm the authenticity thereof. Nevertheless, the witness averred that the suit property was lawfully sold to the 1st Defendant.
48. Whilst still under cross examination, the witness averred that the 1st Defendant subsequently sold the suit property to the 2nd Defendant. In this regard, the witness testified that sale between the 1st Defendant and the 2nd Defendant was reduced into writing. In any event, the witness added that the sale agreement was attested by an advocate.
49. It was the further testimony of the witness that the land in question was under the custody of the 1st Defendant. Nevertheless, the witness conceded that the 1st Defendant has not availed a copy of the transfer of lease before the court.
50. Furthermore, the witness has also admitted that the 1st Defendant has not produced a copy of the certificate of lease that was issued unto her [1st Defendant].
51. On re-examination by learned counsel for the 1st Defendant, the witness averred that the suit property lawfully belonged to the 1st Defendant before same [suit property] was sold to the 2nd Defendant.
52. With the foregoing testimony, the 1st Defendant's case was closed.

c. 2nd Defendant's Case:

53. The 2nd Defendant's case is anchored on the evidence of one witness, namely, Edward Njuguna Kangethe. Same testified as DW2.



54. It was the testimony of the witness [DW2] that same is the 2nd Defendant in respect of the instant matter. In any event, the witness averred that same is therefore conversant with the facts of the matter herein.
55. It was further the testimony of the witness that same has since recorded a witness statement dated the 15th September 2023. To this end, the witness sought to adopt and rely on the contents of the witness statement. Suffice it to state that the witness statement under reference was thereafter adopted and constituted as the evidence in chief of the witness.
56. Additionally, the witness adverted to the list and bundle of documents dated the 15th September 2023 and thereafter sought to tender and produce the documents as exhibits before the court. There being no objection to the production of the documents, same were produced as exhibits D1 to D5, respectively on behalf of the 2nd Defendant.
57. Other than the foregoing, the witness referenced the statement of defence and counterclaim dated the 9th August 2023. In this regard, the witness invited the court to adopt and rely on the contents of the statement of defence and counterclaim. In particular, the witness implored the court to grant the reliefs at the foot of the counterclaim.
58. On cross examination by learned counsel for the 1st Defendant, the witness averred that same [witness] entered into a sale/purchase agreement with the 1st Defendant. In this regard, the witness testified that sale agreement has been tendered and produced before the court.
59. It was the further testimony of the witness that prior to entering into the sale agreement with the 1st Defendant, same [witness] undertook an official search in respect of the suit property.
60. Furthermore, the witness averred that same subsequently paid the purchase price of kes.22, 000, 000/= . Further and in any event, the witness averred that the payment of the purchase price was duly acknowledged by the 1st Defendant.
61. On cross examination by learned counsel for the 3rd and 4th Defendants, the witness averred that prior to entering into the sale agreement, same undertook inspection of the suit property. To this end, the witness averred that the suit property was vacant.
62. In addition, it was the testimony of the witness that same also undertook an official search in respect of the suit property. However, the witness clarified that the official search was carried out by his [witness] advocate.
63. Whilst still under cross examination, the witness stated that stamp duty over and in respect of the suit property was duly paid. In this regard, the witness averred that the stamp duty was Kes.3, 000, 000/=Only.
64. On cross examination by learned counsel for the Plaintiffs, the witness averred that same entered into a sale agreement with the 1st Defendant in the year 2018. In addition, the witness averred that the sale agreement was crafted/prepared by an advocate.
65. Whilst still under cross examination, the witness averred that the advocate who attested the sale agreement was known as Munoro.
66. It was the further testimony of the witness that prior to entering into the sale agreement same [witness] visited the suit property. In any event, the witness averred that he visited the suit property in the presence of the vendor.



67. It was the further testimony of the witness that same [witness] was availed a copy of the certificate of title. Besides, the witness averred that same also procured and obtained an official search over the suit property.
68. Nevertheless, the witness conceded that he [Witness] has neither tendered nor produced a copy of the certificate of title nor the official search in respect of the suit property.
69. Whilst under cross examination, the witness averred that the documents which he [witness] has produced before the court are photocopies. Furthermore, the witness added that what he has produced before the court are the documents which he [witness] was given by the vendor.
70. It was the further testimony of the witness that the suit property was sold/bought for the sum of kes.22, 000, 000/= Only. Furthermore, the witness averred that same paid the stamp duty in respect of the transfer of the suit property. For good measure, the witness averred that the stamp duty was kes.3, 000, 000/=Only.
71. Whilst still under cross examination, the witness acknowledged that even though same paid stamp duty he has neither tendered nor produced a copy of the stamp duty pay-in slip.
72. It was the further testimony of the witness that same is the registered owner of the suit property. Nevertheless, the witness admitted that he was never availed the original lease from the Mureithi Family, who were the original proprietors of the suit property. In addition, the witness conceded that same was also not availed the documents transferring the land from the Rashidas.
73. Whilst under cross examination, the witness stated that same was not availed the original certificate of title. In particular, the witness acknowledged that same has neither produced nor availed any original document in respect of the suit property.
74. It was the further testimony of the witness that the transaction in respect of the suit property was handled by his [witness] advocate. In addition, the witness averred that thereafter the advocates forwarded the completion documents unto him [witness].
75. On re-examination, the witness averred that same [witness] has tendered various documents confirming his ownership rights to the suit property. In particular, the witness averred that the suit property belonged to him and not the 1st Defendant.
76. Regarding payment of stamp duty, the witness averred that same paid stamp duty. Nevertheless, the witness clarified that the payment on account of stamp duty was forwarded to his advocates.
77. On further re-examination, the witness averred that it is him [witness] who is in occupation of the suit property. Nevertheless, the witness stated that even though he is in occupation of the suit property, same [witness] has not developed the property.
78. It was the further testimony of the witness that same has not developed the suit property because the Plaintiffs herein registered a caution against the title. To this end, the witness referenced the Caution registered on the 24th July 2019.
79. With the foregoing the 2nd Defendant's case was duly closed.

d. 3rd and 4th Defendants' Case:

80. Though the 3rd and 4th Defendants entered appearance and filed a statement of defence, the 3rd and 4th Defendants neither filed any List and bundle of documents nor witness statement. Furthermore, when the 2nd Defendant's case was closed, the 3rd and 4th Defendants did not call any evidence.



81. For good measure, the 3rd and 4th Defendants case was closed without any evidence being tendered.

Parties Submissions:

82. Upon the close of the hearing, the advocates for the parties intimated to the court that same would be keen to file and exchange written submissions. To this end, the court proceeded to and circumscribed the timelines for the filing and exchange of the written submissions.

83. The Plaintiff herein filed written submissions dated the 1st November 2024 and wherein same highlighted three[3] salient issues including the fact that the Plaintiffs herein have tendered and produced before the court credible evidence to demonstrate ownership of the suit property. Furthermore, the Plaintiffs have also contended that the 1st Defendant has neither tendered nor produced before the court any evidence to show/ demonstrate how same [1st Defendant] acquired the suit property from her predecessors. In particular, it has been contended that the 1st Defendant has neither availed nor tendered any lease instrument nor the transfer instrument to underpin her claim to the suit property.

84. Other than the foregoing, the Plaintiffs have also submitted that the title held by the 2nd Defendant was procured by fraud. In any event, it has been posited that the 2nd Defendant cannot purport to be a bona fide purchaser for value in respect of the suit property. To this end, the Plaintiff has cited and referenced the provisions of Section 26 of the [Land Registration Act](#).

85. The 1st Defendant filed written submissions dated the 20th November 2024 and wherein the 1st Defendant has impugned the Plaintiffs claim to and in respect of the suit property. In particular, it has been submitted that the Plaintiffs herein have failed to prove the existence of a sale agreement underpinning the purchase of the suit property. In addition, it has also been submitted that the transfer instrument that is being relied upon by the Plaintiff herein is materially deficient and therefore invalid.

86. Additionally, the 1st Defendant has submitted that the Plaintiff's title over and in respect of the suit property was acquired by fraud and hence the Plaintiffs' herein have no lawful and/or legitimate rights to the suit property.

87. Nevertheless, it is imperative to underscore that even though the 1st Defendant has impugned the process attendant to the acquisition of the title by the Plaintiffs, learned counsel for the 1st Defendant has remained mute as pertains to how the 1st Defendant acquired the suit property. For good measure, the entirety of the 1st Defendant's submissions touch on and concern the Plaintiff's case and not otherwise.

88. The 2nd Defendant filed written submissions dated the 13th November 2024; and wherein the 2nd Defendant has highlighted three [3] salient issues for consideration by the court. Suffice it to state that the 2nd Defendant has contended that the Plaintiffs herein do not hold any valid title to the suit property. In any event, it has been posited that the certificate of title held by the Plaintiffs was procured by fraud and hence the certificate of title is void.

89. Secondly, the 2nd Defendant has submitted that the suit property hitherto belonged to the 1st Defendant. In addition, it has been submitted that the suit property was sold to the 2nd Defendant. In this regard, the 2nd Defendant has invoked and relied upon the doctrine of bona fide purchaser for value without notice.

90. Thirdly, the 2nd Defendant has submitted that on the basis of being a bona fide purchaser for value, same [2nd Defendant] is therefore entitled to ownership of the suit property. To this end, the 2nd Defendant has cited and referenced Sections 24 and 25 of the [Land Registration Act](#).



91. For the sake of completeness, it is apposite to state that the 3rd and 4th Defendants did not file any written submissions. In any event, none were obtainable or discernible from the e-platform of the court.

Issues for Determination:

92. Having reviewed the pleadings; the evidence [both oral and documentary] and upon the consideration of the written submissions filed on behalf of the respective parties, the following issues do emerge [arise] and are thus worthy of determination;
- i. Whether the Plaintiffs have established and proved entitlement to the suit property.
 - ii. Whether the 1st Defendant lawfully acquired the suit property or otherwise.
 - iii. Whether the 2nd Defendant was/is a bona fide purchaser for value without notice or otherwise.
 - iv. What reliefs if any, ought to be granted.

Analysis and Determination

Issue Number 1 Whether the Plaintiffs have established and proved entitlement to the suit property.

93. The dispute beforehand touches on and concerns ownership of L.R No. Nairobi/Block 99/257 [the suit property]. Suffices it to state that the suit property is being claimed by the Plaintiffs on one hand and the 2nd Defendant on the other hand.
94. Arising from the conflicting claims touching on and concerning ownership of the suit property, it is appropriate to undertake due interrogation and investigations as pertains to the process leading to the registration of the suit property in the names of the Plaintiffs.
95. Before delving into the investigations, it is imperative to underscore that the suit property initially belonged to and was registered in the names of Rashida Dalvi and Prity Barat Patel. To this end, there is consensus between the parties. Suffice it to point out that both the Plaintiffs herein and [sic] the 1st Defendant contend to have purchased the suit property from the said vendors.
96. Having outlined the fact that the suit property previously belonged to and was registered in the names of Rashida Dalvi and Prity Barat Patel., it is now important to ascertain whether the Plaintiffs herein entered into any sale agreement and thereafter procured lawful title in respect of the suit property. To this end, it is worthy to recall that PW1 testified that the vendors herein had granted a power of attorney to their advocates namely Rajinda Kapilla to transact over and in respect of the suit property.
97. It was the further testimony of PW1 that the 2nd Plaintiff and himself [PW1] retained the firm of M/s D. P Kinyanjui & Co Advocates to act for them in respect of the sale transaction. To this end, PW1 averred that the sale transaction was carried out and undertaken on their behalf by their duly nominated advocates.
98. It was the further testimony of PW1 that upon the completion of the sale transaction, the duly executed transfer instrument was lodged at the land registry and thereafter same was duly registered. For coherence, the witness averred that arising from the registration of the transfer instrument, the requisite certificate of lease was issued in favour of the 2nd Plaintiff and himself [PW1].
99. It was the further testimony of PW1 that ultimately upon the completion of the process, their advocates namely M/s D P Kinyanjui & Co Advocates forwarded unto them [Plaintiffs] the original documents vide letter dated the 8th May 2001. [See exhibit P5, which enumerates the various documents that were forwarded].



100. It is also imperative to point out that PW1 also tendered a copy of the transfer of lease, the certificate of lease and the original lease instrument bearing the names of Mureithi Family. Furthermore, it is not lost on the court that PW1 also showed unto the court the original documents which were issued by the Chief Land Registrar [the 3rd Defendant herein].
101. Suffice to point out that the documents that were tendered by PW1 demonstrate the entirety of the process [the complete chain] undertaken by the Plaintiffs towards the acquisition of the suit property. Instructively, every bit of the process has been documented.
102. In my humble view, even though learned counsel for the 1st Defendant endeavoured to impugn the transfer instrument, there is no gainsaying that the transfer instrument which was tendered and produced before the court was duly registered at the Land registry. At any rate, it is not lost on the court that the 1st Defendant did not produce any parallel transfer instrument or at all.
103. To my mind, the Plaintiffs herein have tendered and produced credible evidence to demonstrate the manner in which same [Plaintiffs] acquired the suit property. For good measure, the documentation tendered on behalf of the Plaintiffs have neither been controverted nor impugned.
104. Arising from the foregoing, I am persuaded that the Plaintiffs have proved their claim to ownership over and in respect of the suit property. For good measure, the Plaintiffs have demonstrated blow by blow [step by step] how same acquired the property. Indeed, the Plaintiffs' certificate of title is well grounded.
105. It suffices to state that where two or more persons are contesting over ownership of a landed property, then it behoves the contestant to justify the process leading to the acquisition of the suit property. In this regard, the Plaintiffs have suitably demonstrated the process.
106. In my humble view, the Plaintiffs herein have met and satisfied the threshold that was elaborated in the case of *Munyu Maina versus Hiram Gathiba Maina (Civil Appeal 239 of 2009)* [2013] KECA 94 (KLR) (10 December 2013) (Judgment), where the court of appeal stated and held as hereunder;
- “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.
107. Similarly, it is my finding and holding that the Plaintiffs herein have met the threshold highlighted in the case of *Hubert L. Martin, Cyril Odemdo & Facet Khaemba versus Margaret J. Kamar, Damaris Lenayara, Eileen Kendagor, Mary Kaparo, Maendeleo Ya Wanawake & Commissioner of Lands (Environment & Land Case 98 of 2012)* [2016] KEELC 1092 (KLR) (18 February 2016) (Judgment).
108. For coherence, the court underscored the threshold in the following terms;
31. A court when faced with a case of two or more titles over the same land has to make an investigation so that it can be discovered which of the two titles should be upheld. This investigation must start at the root of the title and follow all processes and procedures that brought forth the two titles at hand. It follows that the title 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's 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 that gave rise to the two titles in issue as it is the only way I can determine which of the two titles should be upheld.

109. Taking into account the ratio decidendi espoused in the decision [supra], I encounter no difficulty in returning a finding that the totality of the documents tendered by the Plaintiffs have proven that the certificate of title is not only lawful but legitimate.
110. In the circumstances, my answer to issue number one [1] is to the effect that the Plaintiffs herein have demonstrated entitlement to the suit property.

Issue Number 2 - Whether the 1st Defendant lawfully acquired the suit property or otherwise.

111. Other than the Plaintiffs who laid a claim to ownership of the suit property, it is worthy to recall that the 1st Defendant had also contended that same [1st Defendant] bought the suit property from the same vendors [Rashida Dalvi and Prity Baharat Patel].
112. To vindicate the contention that same [1st Defendant] bought and acquired the suit property from the said vendors, the 1st Defendant tendered and adduced before the court a sale agreement dated the 25th January 1995. The sale agreement is said to have been executed by Rashida Dalvi and Prity Baharat Patel. However, it is imperative to point out that other than the sale agreement, the 1st Defendant herein neither tendered nor produced a copy of the duly executed transfer instrument [if any] that was ever executed by the vendors.
113. Additionally, it is not lost on the court that the 1st Defendant also did not produce before the court original lease instrument, the certificate of lease [if any] that was issued in her favour and neither did the 1st Defendant produce before the court any evidence of registration of the suit property in her favour. Suffice it to point out that the sale agreement which has been tendered before the court was neither subjected to registration or at all.
114. Furthermore, it is important to recall that the witness who testified on behalf of the 1st Defendant acknowledged and admitted that same [witness] did not tender critical documents to underpin the 1st Defendant's claim to the suit property. For ease of appreciation, it suffices to reproduce critical aspects of the evidence of DW1.
115. Whilst under cross examination by learned counsel for the Plaintiffs, DW1 stated as hereunder;

“I have not availed evidence of how the 1st Defendant purchased/acquired the suit property. I have not tendered any evidence before the court to show the movements of money.
116. Additionally, and whilst cross examination, DW1 stated thus;

“I do agree that the 1st Defendant has not availed a copy of the transfer of the lease before the court. I have not produced a copy of the certificate of lease in the name of the 1st Defendant. I have not produced a copy of the certificate of lease”.



117. From the evidence tendered by and on behalf of the 1st Defendant, it is apparent that there is a serious gap/lacuna in how the suit property was transferred in favour of the 1st Defendant. Quite clearly, no transfer could be undertaken and/or effected in favour of the 1st Defendant in the absence of a duly executed transfer instrument.
118. Other than the evidence tendered on behalf of the 1st Defendant, it is also imperative to take cognizance of the evidence of DW2. Instructively, DW2 is the 2nd Defendant.
119. Whilst under cross examination by learned counsel for the Plaintiffs, DW2 stated thus;
- “I was not availed any lease from the Mureithi Family. I was not given any lease instrument by my transaction advocate. Upon being referred to entry number 6 on exhibit D5, the witness states that the entry in question relates to the Rashidas. I was not given any documents transferring the land from the Rashidas”.
120. Whilst still under further cross examination, DW2 stated as hereunder;
- “I was not availed a copy of the original lease document. I have not availed a copy of the lease that I was given. I have not availed the original certificate of title”.
121. Yet again, the testimony by DW2 deepens the mystery [conundrum] surrounding the transfer and registration of the suit property in the name of the 1st Defendant. Pertinently, the only document that speaks to the fact that the 1st Defendant was ever registered as the owner of the property is entry number 7 contained at the foot of a purported copy of the register which was tendered on behalf of the 2nd Defendant. Nevertheless, there is no gainsaying that before an entry can be made in the register of titles [green card] there must be the transfer instrument to underpin the entry/endorsement in question. Simply put, no entry can be endorsed in the green card [register of titles] without the process documents.
122. In my humble view, the manner in which the 1st Defendant purports to have acquired the suit property is not documented. For the umpteenth time, I beg to reiterate that the only document propagated before the court is a sale agreement which was neither registered nor chargeable with stamp duty at all.
123. Surely, the 1st Defendant cannot imagine that courts of law would rubber stamp a transfer/transaction that is pertinently illegal. Furthermore, there is no gainsaying that a certificate of title which is underpinned by unlawful process does not confer/ bestow upon the bearer any rights or at all.
124. In my humble, albeit considered view, the likes of 1st Defendant herein and their cohorts must [and should] be reminded of the trite and hackneyed position that a certificate of title procured through corrupt scheme, [the one beforehand not excepted] cannot hold sway.
125. Before departing from this issue, it is imperative to cite and reference the ratio decidendi in the case of *Wambui v Mwangi & 3 others* (Civil Appeal 465 of 2019) [2021] KECA 144 (KLR) (19 November 2021) (Judgment)

The jurisprudence relied upon by the appellant and which we find prudent not to replicate are as already highlighted above. We have given due consideration to them in light of the record as assessed herein by us. Our take on the same is that the jurisprudential thread running through all of them is that no court of law should sanction and pass as valid any title to property founded on: fraud; deceitfulness; a contrived decree; illegality; nullity; irregularity, unprocedural or otherwise a product of a corrupt scheme.



126. Similarly, it is also instructive to take cognizance of the holding in the case of *Funzi Island Development Limited & 2 others v County Council of Kwale & 2 others* (Civil Appeal 252 of 2005) [2014] KECA 882 (KLR) (27 February 2014) (Judgment); where the Court [Per Maraga JA, as he then was] stated thus:

A court of law cannot, on the basis of indefeasibility of title, sanction an illegality or give its seal of approval to an illegal or irregularly obtained title.

127. The significance of process in justifying the validity and propriety of title to landed property was also highlighted in the case of *Daudi Kiptugen v The Commissioner of Lands & 4 Others* [2015] eKLR, wherein the court stated thus;

In order to determine the question whether the lease held by the plaintiff is valid, it must be demonstrated that it was properly acquired. It is not enough that one waves a Lease or a Certificate of Lease and assert that he has good title by the mere possession of the Lease or Certificate of Lease. Where there is contention that a Lease or Certificate of Lease held by an individual was improperly acquired, then the holder thereof, must demonstrate, through evidence, that the Lease or Certificate of Lease that he holds, was properly acquired. The acquisition of title cannot be construed only in the end result, the process of acquisition is material. It follows that if a document of title was not acquired through the proper process, the title itself cannot be said to be a good title. If this were not the position, then all one would need to do is to manufacture a Lease or Certificate of Title, at a backyard or the corner of a dingy street, and by virtue thereof, claim to be the rightful proprietor of the land indicated therein. It is therefore necessary for this court to determine how the plaintiff ended up having a Lease and Certificate of Lease in his name, and further determine if the Government did intend to issue the plaintiff with a Lease over the suit land.

128. Embolden by the ratio decidendi espoused in the decisions [supra], I am afraid that the 1st Defendant herein cannot be heard to stake a claim to and in respect of the suit property. Certainly, no such claim can arise merely on the basis of some fictitious entry endorsed in [sic] a copy of the register of title, but which entry is not underpinned by any legitimate transactional document[s].

129. In the circumstances, my answer to issue number two [2] is threefold. Firstly, the 1st Defendant herein did not acquire the suit property from Rashida Dalvi and Prity Baharat Patel [vendors].

130. Secondly, the 1st Defendant herein for reasons only known to herself withheld critical documents inter-alia the transfer instrument [if any] from the court. To this end, the court was entitled to draw and make an adverse inference against the 1st Defendant.

131. Thirdly, the purported entry endorsed in the copy of the green card that was tendered before the court on behalf of the 2nd Defendant and which purports to show registration in the name of the 1st Defendant was procured irregularly, illegally and vide a corrupt scheme.

Issue Number 3 - Whether the 2nd Defendant was/is a bona fide purchaser for value without notice or otherwise.

132. The 2nd Defendant's case is closely inter-twined with that of the 1st Defendant. Pertinently, the 2nd Defendant's case is to the effect that same [2nd Defendant] bought/purchased the suit property from the 1st Defendant.



133. Arising from the foregoing, the 2nd Defendant has contended that same is therefore a bona fide purchaser for value in respect of the suit property. In this regard, the 2nd Defendant seeks to implore the court to protect and sanction his claim to and in respect of the suit property.
134. Premised on the foregoing, it is therefore incumbent upon this court to interrogate whether the factual matrix attendant to and surrounding the 2nd Defendant's claim can sustain the plea of bona fide purchase for value.
135. To start with, it is worthy to recall that the court has already found and held that the 1st Defendant, who allegedly sold the suit property to the 2nd Defendant, did not have any valid title thereto. In the absence of a valid title to the suit property, it is common ground that the 1st Defendant could neither sell nor convey any interests in favour of the 2nd Defendant. [See the Doctrine of Nemo Dat Quod Non Habet].
136. Additionally, it is important to underscore that before a claimant the 2nd Defendant not excepted, can sustain a plea of bona fide purchase for value, same [claimant] must demonstrate and satisfy certain critical ingredients. The critical ingredient[s] that underpin a claim of bona fide purchase for value has received judicial interpretation in a plethora of decisions.
137. In the case of *Mwangi James Njehia v Janetta Wanjiku Mwangi & Simon Kamanu (Civil Appeal 177 of 2019)* [2021] KECA 768 (KLR); the Court of Appeal highlighted the ingredients as hereunder;
37. In Lawrence P. Mukiri Mungai, Attorney of Francis Muroki Mwaura v. Attorney General & 4 Others, Nairobi Civil Appeal No. 146 of 2014 this Court cited with approval the case of *Katende v. Haridar & Company Ltd* (2008) 2 EA 173, where the Court of Appeal in Uganda held that:-

“For the purposes of this appeal, it suffices to describe a bona fide purchaser as a person who honestly intends to purchase the property offered for sale and does not intend to acquire it wrongly.

For a purchaser to successfully rely on the bona fide doctrine as was held in the case of *Hannington Njuki v William Nyanzi* High Court civil suit number 434 of 1996, must prove that:

1. he holds a certificate of title;
2. he purchased the property in good faith;
3. he had no knowledge of the fraud;
4. he purchased for valuable consideration;
5. the vendors had apparent valid title;
6. he purchased without notice of any fraud; and
7. he was not party to the fraud.”

We nonetheless wish to state that the law, including case law is not static and the above requirements which were crafted over twenty years ago cannot be said to have been cast in stone. We hold the view that (5) above will need to be revisited and the word “apparent” be done away with altogether.

38. We say so because in the recent past and even presently, fraudsters have upped their game and we have come across several cases where Title deeds manufactured in the backstreets have, with



collusion of officers in land registries, been transplanted at the Lands Office and intending buyers have been duped to believe that such documents are genuine and on that basis they have “purchased’ properties which later turn out to belong to other people when the correct documents mysteriously reappear on the register or the genuine owner show up after seeing strangers on their properties waving other instruments of title. It is the prevalence of these incidents that have necessitated the current overhaul and computerization of the registration systems at the Land Registry in Nairobi.

138. The Supreme Court of Kenya dealt with what constitutes a claim for bona fide purchase for value and the legal parameters to be satisfied in the case of *Dina Management Limited v County Government of Mombasa & 5 others* (Petition 8 (E010) of 2021) [2023] KESC 30 (KLR) (21 April 2023) (Judgment); where the Court stated as hereunder:

90. The Black’s Law Dictionary 9th Edition; defines a bona fide purchaser as: “One who buys something for value without notice of another’s claim to the property and without actual or constructive notice of any defects in or infirmities, claims, or equities against the seller’s title; one who has in good faith paid valuable consideration for property without notice of prior adverse claims.”

91. The Court of Appeal in Uganda in *Katende v Haridar & Company Ltd* [2008] 2 EA 173, defined a bona fide purchaser for value as follows: “For the purposes of this appeal, it suffices to describe a bona fide purchaser as a person who honestly intends to purchase the property offered for sale and does not intend to acquire it wrongly. For a purchaser to successfully rely on the bona fide doctrine he must prove that:

1. he holds a certificate of title;
2. he purchased the property in good faith;
3. he had no knowledge of the fraud;
4. he purchased for valuable consideration;
5. the vendors had apparent valid title;
6. he purchased without notice of any fraud; and
7. he was not party to the fraud.”

92. On the same issue, the Court of Appeal in *Samuel Kamere v Lands Registrar, Kajiado Civil Appeal No 28 of 2005* [2015] eKLR stated as follows: “...in order to be considered a bona fide purchaser for value, they must prove; that they acquired a valid and legal title, secondly, they carried out the necessary due diligence to determine the lawful owner from whom they acquired a legitimate title and thirdly that they paid valuable consideration for the purchase of the suit property...”

139. Having taken into account [considerations] the fore-cited decisions, it is now appropriate to revert back to the facts of the matter and to discern whether the 2nd Defendant has met and/or satisfied the requisite legal parameters. To start with, I have already pointed out that before one can anchor a claim on the doctrine of bona fide purchaser for value, it is incumbent upon the Claimant to demonstrate that his/her predecessor had a valid title to the suit property. However, in respect of the instant matter, there is no gainsaying that the 1st Defendant herein had no title to the suit property.



140. Secondly, it is also incumbent upon a person seeking to invoke the doctrine/plea of purchaser for value to demonstrate that same undertook due diligence prior to purchasing the designated property. Did the 2nd Defendant undertake such due diligence?
141. Even though the 2nd Defendant testified and stated that same undertook due diligence and procured official search over the suit property, it is not lost on the court that the 2nd Defendant did not tender and/or produce any such certificate of official search. In any event, it suffices to underscore that whilst under cross examination, the 2nd Defendant conceded that no certificate of official search had been produced.
142. To this end, it is imperative to reproduce the evidence of DW2 whilst under cross examination by learned counsel for the Plaintiff.
143. Same [DW2] stated thus;
- “I bought the land from one Hawa. I was availed a copy of the certificate of title. I also procured and obtained an official search over the suit property. I have not produced the certificate of official search before the court”.
144. To my mind, if the 2nd Defendant undertook due diligence and procured a certificate of official search, nothing would have been easier than producing same before the court.
145. On the other hand, it is also important to point out that a claimant seeking to invoke and rely on plea of bona fide purchaser for value must also demonstrate that there was a valid purchase. In this regard, payment of the consideration [purchase price], if any if material and paramount.
146. Did the 2nd Defendant demonstrate payment of the purchase price if at all. In answer to this question, it is instructive to take cognizance of clause 3 of the sale agreement dated the 15th January 2018. [see exhibit D3].
147. In respect of clause three of the said agreement what comes out is that the said purchase price [kes.22, 000, 000/= only] was deposited/paid by the purchaser to the vendor’s account. Though not elegantly worded, what flows from that clause is to the effect that the purchase price was deposited in some undisclosed account.
148. However, when DW2 testified before the court, same [DW2] took a different position and/ or trajectory. Instructively, the witness stated as hereunder;
- “I paid Kes.22, 000, 000/= only. The money was paid in cash, I got the money from my business. The last cash/instalment was kes.2, 000, 000/=only. I paid the last instalment to the vendor. The payments were duly received by the vendor”.
149. My understanding of the evidence tendered by DW2 is to the effect that the purchase price was not deposited in any account. To the contrary, DW2 takes the position that the money was paid in cash.
150. Additionally, there is yet another perspective [twist] that merits consideration. The perspective relates to the contention that the money was indeed being paid by instalments.
151. The two versions placed before the court [details highlighted in the preceding paragraphs] casts doubt as to the validity of the claim that the purchase price [if any] was paid.
152. In my considered view, the 2nd Defendant has failed to satisfy the court that same [2nd Defendant] was/ is a bona fide purchaser for value without notice.



Issue Number 4 - What reliefs; if any, ought to be granted.

153. The Plaintiffs herein filed the amended Plaint dated the 14th June 2023 and wherein same [Plaintiffs] have sought for diverse reliefs. Pertinently, the Plaintiffs have sought for an order of declaration that the suit property lawfully belongs to same.
154. Whilst discussing issue number one, the court held that the Plaintiffs have placed before the court credible evidence to underpin their claim to the suit property. Notably, the Plaintiffs demonstrated the process leading to the issuance of the certificate of title in their joint names.
155. To my mind, the Plaintiffs herein have established and proven a clear basis to warrant the grant of the declaratory sought.
156. Secondly, the Plaintiffs sought for an order to revoke and nullify the entries pertaining to the registration of the suit property in the name of the 1st Defendant and by extension to nullify the certificate of title [if any] in the name of the 2nd Defendant. It is imperative to recall that the court has also found and held that the entry in favour the 1st Defendant was procured by fraud and on the basis of a corrupt scheme.
157. Arising from the foregoing, there is no gainsaying that the plea by the Plaintiffs for rectification of the register of the suit property, is merited. To this end, I am persuaded that the entry underpinning the name of the 1st Defendant ought to be revoked.
158. The other claim by the Plaintiffs herein touches on the issuance of an order of permanent injunction. There is no gainsaying that the registered owner of a landed property is bestowed with statutory rights and privileges, including the right to absolute and exclusive possession, occupation and use. See Section 24 and 25 of the [Land Registration Act](#), 2012.
159. In my humble view, the enjoyment of the statutory rights and privileges underpinned by Section 24 and 25 of [land Registration Act](#) [supra] cannot be realized in the absence of an order of permanent injunction. In short, I hold the position that the Plaintiffs are entitled to an order of permanent injunction to vindicate their statutory rights to the suit property. [See *Mohansons (Kenya) Limited v Registrar of Titles, Mary Murtazza Ondatto & Attorney General (Petition 103 of 2012)* [2017] KEELC 2730 (KLR) (6 June 2017) (Ruling)].
160. Other than the Plaintiffs, the 2nd Defendant herein also filed a counterclaim and in respect of which same sought for various reliefs. In particular, the 2nd Defendant invited the court to find and hold that same [2nd Defendant] is a bona fide purchaser for value without notice. Nevertheless, the court has since found and held that the plea of bona fide purchaser for value is not legally untenable.
161. Additionally, the 2nd Defendant herein also sought for an order for cancellation/revocation of the certificate of title bearing the names of the Plaintiffs [1st and 2nd Defendants to the counterclaim]. Sadly, the 2nd Defendant's prayer to this effect, cannot suffice.
162. The 2nd Defendant also sought of an order permanent injunction to bar and/or restrain the Plaintiff [1st and 2nd Defendants to the Counter-claim] from entering upon, remaining on or otherwise interfering with the 2nd Defendant's rights to the suit property.
163. Suffice it to underscore, that an order of permanent injunction can and does issue to protect the rights of the lawful and registered proprietor. However, such an order cannot issue in favour of a busybody.



164. On the contrary, it is also common ground that an order of permanent injunction cannot issue against the registered owner of the property. Quite clearly, such an order cannot issue against the Plaintiffs [1st and 2nd Defendants to the counterclaim] who are the lawful owners of the suit property.

165. In this regard, I am reminded of the dictum in the case of Nguruman Limited v Jan Bonde Nielsen & 2 others [2014] Eklr, where the court stated as hereunder;

It must also be remembered that it is a serious thing to restrain a registered proprietor of a property over what is undeniably his unless there are justifiable grounds to do so.

Final Disposition:

166. Flowing from the analysis [enumerated/highlighted in the body of the judgment], it is apparent that the Plaintiffs herein have proven their claim/entitlement to the suit property on a balance of probabilities. In this regard, the Plaintiffs' suit is meritorious.

167. On the other hand, there is no gainsaying that the 2nd Defendant's counterclaim has not been proven. To this end, it suffices to posit that the 2nd Defendant's counterclaim is devoid of merits.

168. In the circumstances, the final orders that commend themselves to the Court are as hereunder;

- i. The Plaintiffs' suit be and is hereby allowed.
- ii. A declaration be and is hereby issued that the Plaintiffs are the proprietors of L.R No. Nairobi/Block 99/257.
- iii. A declaration be and is hereby issued that the 1st and 2nd Defendants procured and obtained title to L.R No. Nairobi/Block 99/257 illegally, unlawfully and by fraud.
- iv. The entry relating to and concerning [sic] the registration of L.R No. Nairobi/Block 99/257 in the name of the 1st Defendant be and is hereby cancel, revoked, nullified and expunged from the record obtaining at the land registry.
- v. The certificate of title [if any] issued in favour of the 2nd Defendant over and in respect of L.R No. Nairobi/Block 99/257 be and is hereby cancelled, revoked and nullified.
- vi. The 2nd Defendant be and is hereby ordered and directed to surrender the certificate of title in respect of L.R No. Nairobi/Block 99/257 to the chief land registrar for cancellation within 45 days from the date hereof.
- vii. The Chief Rand registrar shall nevertheless be at liberty to cancel and revoke the certificate of title in the name of the 2nd Defendant herein, irrespective of submissions thereof or otherwise.
- viii. The cancellation of the certificate of title in the name of the 2nd Defendant shall thereafter be gazetted by the 3rd Defendant in the Kenya gazette, albeit at the expense of the Plaintiffs herein.
- ix. There be and is hereby granted an order of permanent injunction to restrain and prohibit the 1st and 2nd Defendant, either by themselves, agents, servants and/or anyone acting under on their instructions from entering upon, trespassing onto and/or otherwise interfering with the Plaintiffs' rights over the suit property, in any manner whatsoever and/or howsoever.
- x. The 2nd Defendant's counterclaim be and is hereby dismissed.
- xi. Costs of the suit and the counterclaim be and are hereby awarded to the Plaintiffs/1st and 2nd Defendants to the counterclaim only.



- xii. For the avoidance of doubt, no costs are awarded to the 3rd and 4th Defendants insofar as the impugned transactions may have been undertaken in connivance with officers of the 3rd Defendant.

169. It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 16TH DAY OF JANUARY 2025

OGUTTU MBOYA

JUDGE

In the presence of:

Benson – court Assistant.

Mr. Ngugi for the Plaintiffs.

Mr. Moses N. Siagi for the 1st Defendant.

Ms. Rachael Njoroge for the 2nd Defendant.

Mr. Mwambonu for the 3rd and 4th Defendants

