



**Rogito v Mogaka & another (Environment & Land Case 84 of 2017)  
[2025] KEELC 2948 (KLR) (26 March 2025) (Judgment)**

Neutral citation: [2025] KEELC 2948 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KISII  
ENVIRONMENT & LAND CASE 84 OF 2017**

**M SILA, J**

**MARCH 26, 2025**

**BETWEEN**

**GIDEON ANUNDA ROGITO ..... PLAINTIFF**

**AND**

**ANGELIUS GUTO MOGAKA ..... 1<sup>ST</sup> DEFENDANT**

**CHARLES O. MIGOSI ..... 2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

(Plaintiff filing suit alleging that the defendants have trespassed into his land; plaintiff only having an allotment letter as proof of ownership of the suit land; no evidence that the plaintiff has made payment for the allotment letter; locus standi of the plaintiff challenged; court finding that the plaintiff has not proved ownership of the suit land and therefore lacks locus standi; without locus standi court cannot proceed to the merits of the case; plaintiff's suit dismissed)

1. This suit was commenced through a plaint filed on 7 April 2017 which plaint was subsequently amended. In the amended plaint, the plaintiff has pleaded to be the owner of the Plot No. 15 Nyanchwa, currently titled as Kisii Municipality/Block I/507 (the suit land). The 1<sup>st</sup> defendant is the owner of the Plot No. 14 Nyanchwa which is titled as Kisii Municipality/Block I/506 whereas the 2<sup>nd</sup> defendant is the owner of the Plot No. 16 which is titled as Kisii Municipality/Block I/508. The plaintiff has pleaded that the defendants have encroached into the suit land, the 1<sup>st</sup> defendant by a margin of 0.0057 ha and the 2<sup>nd</sup> defendant by a margin of 0.00018 ha. He has pleaded that the defendants are reluctant to demolish their structures on the suit property and his plans to develop the suit land have been thwarted by the massive encroachment by the defendants.
2. In the amended plaint he has asked for the following orders :
  - a. General damages.



- b. A permanent injunction to restrain the defendants from trespassing, occupying or dealing with the suit land.
  - c. A declaration that the defendants are trespassers on the suit land. Loss of user for the last 6 years to date.
  - d. An order for demolition of the structures constructed by the defendants on the suit land.
  - e. Special damages of kshs. 50,000/=.
  - f. Costs of the suit.
  - g. Any other relief that the honourable court may deem fit and expedient to grant.
3. The 1<sup>st</sup> defendant filed a defence which he amended upon amendment of the plaint. In the amended defence, he more or less refuted the pleadings in the plaint and asserted that if there is any building of his then it is on his plot Kisii Municipality/Block I/506. He also pleaded that the plaintiff has not explored the machinery in Section 18 of the Land Registration Act. The 2<sup>nd</sup> defendant filed a very brief four paragraphed defence. He denied the claim of the plaintiff and averred that he acquired approvals and developed his plot long before the plaintiff was allotted the suit land.
  4. The plaintiff, who lives in the USA, testified that he owns the suit land and produced an allotment letter issued to him in 2016 to prove ownership. He also relied on a survey report and a valuation report to support his case. He wanted the defendants to demolish what they have developed on his land.
  5. Cross-examined by the 1<sup>st</sup> defendant's counsel on his ownership of the land, he stated that it was sold to him by his father through an agreement dated 10 August 2011 which agreement he did not have. He testified that he is yet to get the Lease since he is yet to come back to Kenya from the USA to collect it. All he had was the allotment letter. He claimed however that his father had a lease and Certificate of Lease which he however never presented as exhibits. It was put to him that the entire Block I plots overlap but he stated that he had no such knowledge.
  6. Cross-examined by counsel for the 2<sup>nd</sup> defendant, he testified that his father died in 2004. He now stated that it was his mother who sold the land to him in 2011 as she was administrator of the estate of his late father. He stated that the Lease certificate that his father had had not been transferred to his mother but she was administrator of his father's estate. He did not know when the defendants started constructing but they had already constructed by 2016. He stated that he consulted the Municipality before filing this suit but he did not have the correspondence. He claimed to have talked to the defendants on phone but no demand letter was written to them. He also claimed to be paying land rates but he did not have any receipts in proof thereof.
  7. Re-examined, he testified that the land is his and not his father's. He asserted that the dispute is not whether the land is his but whether there is encroachment and the issue whether the land belongs to him does not arise. He now stated that he did a demand through his lawyer and that he also called on phone and talked to the defendants. He averred that he found the defendants in possession when he bought the land. He claimed that the property has a lease but he has not yet picked it from the Lands office and that the Lease contains his name. He affirmed that he is claiming entitlement to the suit land solely through the allotment letter that he produced as an exhibit.
  8. PW – 2 was David Lemaiyan, a surveyor working with the Ministry of Lands, and stationed in Kisii. His evidence was that he undertook a survey of the parcels of land in dispute pursuant to a court order. His findings were that there were encroachments from one parcel to the other. For the suit land, there was encroachment from the parcel No. 506 and 507 respectively by a margin of 0.0071 and 0.0004 Ha.



- He testified that the Plot No. 15 was surveyed and issued with a Lease or a title indicating title No. 507. He testified that in undertaking the survey, he used the survey plan F/R No. 185/34 and the Registry Index Map for Kisii Municipality Block I. He prepared a report which he produced as an exhibit. The findings therein are that the Plots No. 14, 15 and 16, are allotment numbers issued by the National Housing Corporation and that the positions of Plots No. 14, 15 and 16 correspond with surveyed leasehold parcel numbers 506, 507 and 508, each measuring 0.189 Ha.
9. Cross-examined by counsel for the 1<sup>st</sup> defendant, he testified that he did not survey the whole of Block I as the court order was specific on the survey of the Plot No. 15. He denied that the entire Block I plots overlap. Cross-examined by counsel for the 2<sup>nd</sup> defendant, he testified that he did not see any allotment letter of the parties nor did he see any lease certificate of any of the parties. He did not know that the plaintiff has an allotment letter from the National Land Commission. He stated that he ascertained the rightful parties from the area Chief who was present. He did not delve in the ownership details of the owners of the plots. He testified that from the survey plan, the plots are of equal sizes but it is different on the ground owing to encroachment.
  10. PW-3 was Erastus Kanyangi, a valuer by profession. His evidence was that he undertook a valuation of the suit land and prepared a report which is dated 20 January 2022. He relied on the surveyor's report on the size of the plot which identified encroachment by both parcels No. 506 and 508 by margins of 0.0071 Ha and 0.0004 Ha respectively. According to him, the value of the land encroached by the parcel No. 506 is Kshs. 758,000/= and the value of the land encroached by the parcel No. 508 is Kshs. 45,000/=. He valued what is left of the plot at Kshs. 1, 217,000/=. He charged Kshs. 100,000/= for the valuation report and his court attendance fee was Kshs. 10,000/=.
  11. With the above evidence, the plaintiff closed his case.
  12. DW – 1 was Angelius Guto Mogaka, the 1<sup>st</sup> defendant. He testified that he owns the parcel Kisii Municipality/Block I/506 and he had the lease and certificate of lease. He testified that his parcel was initially identified as Plot No. 14. He testified that his plot measures 27 x 77 feet and that he has developed the whole plot with a permanent house. He denied trespass into any plot. He stated that when he bought his plot, he brought a surveyor from the Municipality who placed the beacons. He added that his building plan was approved and he constructed according to it. Cross-examined by counsel for the 2<sup>nd</sup> defendant, he testified that he was never served with a demand notice nor has he at any time been called by the plaintiff. Cross-examined by counsel for the plaintiff, he stated that he did not have any beacon certificate and nothing to show that a surveyor visited his land and put beacons. He claimed that he did not participate in the survey exercise conducted by Mr. Lemaiyan and he had not seen the report.
  13. DW – 2 was Charles Ogechi Migosi, the 2<sup>nd</sup> defendant. He owns the Plot No. 16 Site & Service Scheme. He testified that he has an allotment letter given to him in 1977 but he does not yet have a lease because it has a loan. He explained that one obtains title after he clears the loan. He testified that he has commenced development on his land. He testified that he was shown his beacons and had his building plan approved before he started building. He stated that the size of his land is 27 x 77 feet. Cross-examined by counsel for the plaintiff, he stated that he does not have the report of the engineer who showed him the beacons of his plot. He contended that it could not be alleged that he has encroached since his plot now measures 25 x 77 feet thus missing 2 feet. According to him the suit Plot, i.e Plot No. 15 belongs to one Onyango who he claimed had started building but was stopped by the physical planners.
  14. With the above evidence, the defendants closed their case.



15. I invited counsel to file their closing submissions and I have seen the submissions of Mrs. Morara for the plaintiff and those of Mr. Sagwe and Mr. Aminga, respectively for the 1<sup>st</sup> and 2<sup>nd</sup> defendants.
16. In his submissions, Mr. Sagwe pointed out that the plaintiff only supplied a letter of allotment and he had not lease nor certificate of lease. He submitted that he was not capable of being the owner of the suit land. He submitted that the plaintiff did not show that he has complied with the special conditions in the allotment letter. He also submitted that despite the plaintiff giving evidence that he was given the land by his father, who was said to be deceased, no evidence was shown how he obtained the land from his deceased father and no succession was ever established. He submitted that the plaintiff testified that the land was sold to him by his father through an agreement dated 10 August 2011 yet his father died in 2004 which could not happen. He submitted that the plaintiff does not have locus standi to bring the suit. He also submitted that all parcels of land in Kisii Municipality Block I, overlap each other. He faulted the Surveyor for visiting the land without the Land Registrar or Physical Planner. Counsel relied on the Supreme Court decision in the case of Torino Enterprises Limited vs Hon. Attorney General & Others, Petition No. 5 (E006) of 2022, judgment of 22 September 2023.
17. The same issue of locus was raised by Mr. Aminga, learned counsel for the 2<sup>nd</sup> defendant, in his submissions. He submitted that according to the plaintiff's evidence, the suit land was owned by his father who died in 2004 and that his father had a Lease Certificate. He submitted that this Lease Certificate was never produced. He also submitted that an allotment letter is incapable of conferring interest in land and is nothing more than an offer. He referred to the case of Gladys Wanjiru Ngacha vs Teresa Chepsaat & 4 Others, High Court Civil Case No. 182 of 1992 (2008) eKLR. He submitted that it is the act of registration that confers ownership of land in Kenya. He submitted that the plaintiff is not the proprietor of the suit land. He also referred to the evidence of the plaintiff that he purchased the suit land from his father in 2011 yet his father was already dead at that time. He further pointed to the evidence where the plaintiff stated that he bought the land from his mother and submitted that at this time the land had not been transferred to her. He submitted that the plaintiff was unable to prove how he acquired the suit land. He submitted that the plaintiff's claim that he is far away in the USA is a lame excuse as he could have instructed his counsel to obtain an official search if he indeed possesses a Lease Certificate. He closed his submissions by pressing the point that the plaintiff is not the proprietor of the suit land and lacks locus standi and his suit must fail.
18. Mrs. Morara, learned counsel for the plaintiff, did not address the issue of locus of the plaintiff in her submissions. She nevertheless asserted that trespass was proved and the plaintiff deserved the prayers in the plaint.
19. I have considered all the foregoing.
20. An issue of locus has arisen and this is a threshold point. Without demonstrating locus standi, one cannot have capacity to sue. In the case of Daykio Plantations Limited v National Bank of Kenya Limited & 2 others [2019] eKLR the court observed as follows :

“It is therefore evident that locus standi is the right to appear and be heard in Court or other proceedings and literally, it means ‘a place of standing’. Therefore if a party is found to have no locus standi, then it means he/she cannot be heard even on whether or not he has a case worth listening to. It is further evident that if this Court was to find that the Applicant has no locus standi, then the Applicant cannot be heard and that point alone may dispose of the suit.”
21. Generally, in matters touching on private land, it is the owner of the land who can sue, because it is the owner who is vested with the rights and privileges attached to the particular land to the exclusion



of all others. This is the tenor of Sections 24, 25 and 26 of the [Land Registration Act](#), which provide as follows :

24. Interest conferred by registration

Subject to this Act—

- (a) the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto; and
- (b) the registration of a person as the proprietor of a lease shall vest in that person the leasehold interest described in the lease, together with all implied and expressed rights and privileges belonging or appurtenant thereto and subject to all implied or expressed agreements, liabilities or incidents of the lease.

25. Rights of a proprietor

- (1) The rights of a proprietor, whether acquired on first registration or subsequently for valuable consideration or by an order of court, shall not be liable to be defeated except as provided in this Act, and shall be held by the proprietor, together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever, but subject—
  - (a) to the leases, charges and other encumbrances and to the conditions and restrictions, if any, shown in the register; and
  - (b) to such liabilities, rights and interests as affect the same and are declared by section 28 not to require noting on the register, unless the contrary is expressed in the register.
- (2) Nothing in this section shall be taken to relieve a proprietor from any duty or obligation to which the person is subject to as a trustee.

26. Certificate of title to be held as conclusive evidence of proprietorship

- (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.

22. Thus, when it comes to asserting private rights over private land, one needs to prove ownership of the land in question. The best proof of ownership is of course the certificate of title which indeed the courts are enjoined to consider as prima facie evidence of proprietorship pursuant to Section 26 (1) above.



23. In our case the disputed land was initially identified as a Plot No. 15, which is explained in the surveyor's report as a National Housing Corporation allotment number for plots in Nyanchwa Site & Service. The surveyor indicated that the suit land is now identified as Kisii Municipality/Block I/507. The question before us is, has the plaintiff proved that he is the owner of this Plot No. 15 or the land parcel Kisii Municipality/Block I/507 ?
24. All that the plaintiff produced was an allotment letter in his name which I have looked at. It is dated 18 August 2016 and it allots the plaintiff the land parcel Kisii Municipality/Block I/507 approximately 0.018 ha "subject to adjustment on survey." The term is for 99 years from 1 August 2016. The allotment letter clearly states that it is an offer to the plaintiff subject to receiving a formal acceptance and payment of the stipulated charges within 30 days, which charges are specified and amount to Kshs. 20,755/= in total. The plaintiff did not produce any document to prove that he has fully complied with the terms of this offer. It follows that all he has produced is an offer letter without proof of its acceptance and I am afraid that this is not good enough to demonstrate that he owns the suit land.
25. Indeed, it was affirmed by the Supreme Court in the case of Torino Enterprises Limited vs Hon. Attorney General & Others, Petition No. 5 (E006) of 2022, judgment of 22 September 2023, cited by Mr. Sagwe, that an allotment letter is nothing more than an offer and it is not proof of title. In the said case it was elaborated as follows :
58. So, can an allotment letter pass good title? It is settled law that an allotment letter is incapable of conferring interest in land, being nothing more than an offer, awaiting the fulfilment of conditions stipulated therein. In *Dr Joseph NK Arap Ng'ok v Justice Moijo Ole Keiyua & 4 others CA 60/1997* [unreported]; and in *Gladys Wanjiru Ngacha v Teresa Chepsaat & 4 others HC Civil Case No 182 of 1992; [2008] eKLR*, the superior courts restated this principle as follows:
- "It has been held severally that a letter of allotment per se is nothing but an invitation to treat. It does not constitute a contract between the offerer and the offeree and does not confer an interest in land at all " [Emphasis added].
59. The pronouncement in *Gladys Wanjiru and Dr Joseph NK Arap Ng'ok (supra)* has been echoed in various Environment and Land Court decisions post the 2010 Constitution, including; *Lilian Wanjeri Njatha v Sabina Wanjiru Kuguru & another, Environment and Land Case No 471 of 2010; [2022] eKLR*; *John Elias Kirimi v Martin Maina Nderitu & 4 others, Environment and Land Suit No 320 of 2011; [2021] eKLR*; and *Kadzoyo Chombo Mwero v Ahmed Muhammed Osman & 11 others, Environment and Land Case No 42 of 2021; [2021] eKLR*, to mention but a few.
60. Suffice it to say that an Allottee, in whose name the allotment letter is issued, must perfect the same by fulfilling the conditions therein. These conditions include but are not limited to, the payment of a stand premium and ground rent within prescribed timelines. But even after the perfection of an allotment letter through the fulfillment of the conditions stipulated therein, an allottee cannot pass valid title to a third party unless and until he acquires title to the land through registration under the applicable law. It is the act of registration that confers a transferable title to the registered proprietor, and not the possession of an allotment letter. In *Peter Wariire Kanyiri v Chrispus Washumbe & 2 others, Environment and Land Court Case No 603 of 2017; [2022] eKLR*, Kemei, J held as follows:
- "[15]. In the case at hand, in the absence of any title registered in the name of the plaintiff, the court is unable to hold that the plaintiff is the registered proprietor of the land.



This is because the letter of allotment lapsed within 30 days and the same is of no legal consequences” [Emphasis added].

26. Similarly, in the case of Evans Kafusi Mcharo vs Permanent Secretary Ministry of Roads Public Works and Housing & Another [2013] eKLR it was stated thus :

“ 30. What is the legal position of a letter of allotment ? In making a distinction between petitioners who held letters of allotment and those who were registered proprietors of the land in question, this court in the case of John Mukora Wachihhi & Others vs Minister for Lands & Others High Court Petition NO 82 of 2010 observed that the distinction is based on the fact that the right to property protected under the law and *the constitution* is afforded to registered owners of land; that a letter of allotment is not proof of title as it is only a step in the process of allocation of land. The court relied in that regard on the position enunciated by the Court of Appeal in the case of Wreck Motors Enterprises vs The Commissioner of Lands and 3 Others Nairobi Civil Appeal No 71 of 1997, where the Court of Appeal stated as follows:-

“Title to land property normally comes into existence after issuance of a letter of allotment, meeting the conditions stated in such a letter and actual issuance thereafter of a title document pursuant to provisions held”.

27. Another case that illustrates the point is the case of Omotto & 2 others (Suing as the Officials of Kisumu-Nyando Mwalimu Sacco) v Ramogi & 3 others (Environment and Land Case Civil Suit E002 of 2020) [2023] KEELC 20609 (KLR) (12 October 2023) (Judgment) . The plaintiffs, who only had an allotment letter, sued for trespass. Their case was dismissed, the court holding as follows :

18. With regard to ownership, it was not disputed that the Plaintiffs had not obtained titles to the suit properties at the time of filing this suit and even in 2023 when they gave evidence in the matter. The documents that the Plaintiffs produced at the trial were a letter of allotment dated 17<sup>th</sup> June 1999 in the name of George A. Nyagowa and an agreement for sale dated 1<sup>st</sup> July 2008 in respect of L.R No. 20779, and Grant No. I.R 126558 in the name of Fred Kowido Odia t/a Linkline Communication Company and an agreement of sale dated 6<sup>th</sup> October 2010 in respect of L.R No. 28423. These documents could not pass titles in the suit properties to the Plaintiffs. The letter of allotment dated 17<sup>th</sup> June 1999 neither conferred a title to L.R No. 20779 upon George A. Nyagowa who purportedly sold the property to the Plaintiffs or to the Plaintiffs. A letter of allotment is not a title. There is no evidence that upon being issued with the said letter of allotment, George A. Nyagowa accepted the terms thereof and paid a sum of Kshs. 191,340/- on account of stand premium and other charges within 30 days. There is also no evidence that George A. Nyagowa was issued with a title in respect of the property that he could transfer to the Plaintiffs.

28. It is apparent from the above that the flashing of the allotment letter by itself is not sufficient proof of ownership of the land, moreso where the allottee has not demonstrated compliance with the terms of the allotment letter to signal acceptance of the offer.

29. Apart from the foregoing, the evidence of the plaintiff regarding ownership of the land is irreconcilable and all jumbled up, and is impossible to make sense of it. In his pleadings, the plaintiff pleaded to be “the registered owner of Plot No. 15 Nyanchwa currently titled as Kisii Municipality/ Block I/507.” He of course produced no evidence of being registered as owner of this Plot No. 15 from National



Housing Corporation nor any title demonstrating that he is the registered proprietor of the title Kisii Municipality/Block I/507. It will be recalled that in his evidence, he stated that this was his father's land and that his father sold to him the land vide an agreement dated 10 August 2011 but it turned out that his father died in 2004. It is of course an impossibility that his now deceased father could somehow enter into an agreement on 10 August 2011 with the plaintiff. When pressed on this impossibility, he now changed tune to state that the land was actually sold to him by his mother who was administrator of his father's estate. No agreement was produced and no grant of letters of administration indicating that his mother held letters of administration for his father's estate were produced. It will also be recalled that the plaintiff testified that his father had a leasehold certificate but no such Certificate of Lease was produced. If his father had a title then there needs to be transfer by the administrator of his estate to the plaintiff but nothing of the sort was availed. Moreover, if we are to believe the evidence of the plaintiff that his father had a Certificate of Lease for the suit land, it doesn't add up that an allotment letter is now being issued to him in the year 2015. If his father held the certificate of lease then the land ought to be transmitted through succession after which a new Certificate of Lease will issue to the beneficiary. The plaintiff has demonstrated none of the above.

30. Given the foregoing, I am persuaded that the plaintiff has failed to prove that he is truly the owner of the Plot No. 15 Kisii Site & Service (Nyanchwa) and/or the owner of the land parcel Kisii Municipality/Block I/507. I have already elaborated that the mere holding of an allotment letter is not good enough. Not having proved ownership, it cannot be said that the plaintiff has locus to sue in respect of this land.
31. For want of locus standi this court cannot proceed to analyse the substance of the case, i.e whether or not the defendants have trespassed into the suit land. This court can only make that determination after it has been moved by a person who demonstrates that he actually owns the said parcel of land. One cannot sue over private land without showing that he owns it or has rights over it. In other words, you cannot casually walk into court and sue persons for land that you cannot prove that you own or have rights over.
32. Without proving locus standi, the plaintiff's case has no legs upon which to stand on and it is hereby dismissed with costs to the defendants.
33. Judgment accordingly.

**DATED AND DELIVERED THIS 26 MARCH 2025**

**JUSTICE MUNYAO SILA**

**JUDGE, ENVIRONMENT AND LAND COURT**

**AT KISII**

Delivered in the presence of :

Mrs. Morara for the plaintiff

Mr. Sagwe for the 1<sup>st</sup> defendant

Mr. Aminga h/b for Mr. Nyariki for the 2<sup>nd</sup> defendant

Court Assistant : Michael Oyuko.

