Lagat v Kebut (Environment and Land Appeal E021 of 2022) [2023] KEELC 18432 (KLR) (26 June 2023) (Judgment)

Neutral citation: [2023] KEELC 18432 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT ITEN

ENVIRONMENT AND LAND APPEAL E021 OF 2022

L WAITHAKA, J

JUNE 26, 2023

BETWEEN

WILLIAM RERIMOI LAGAT .... APPELLANT

AND

DICKSON KIPROP KEBUT .... RESPONDENT

(Being an Appeal from the Judgment of Hon. P. Biwott Kabarnet CMELC No. 20 of 2020 delivered on 18th October 2022)

JUDGMENT

Introduction

1. By a plaint dated 18th May 2020, Dickson Kiprop Kebut (herein after referred to as the respondent), instituted a suit in the lower court to wit Kabarnet PMC ELC Case No.33 of 2020 seeking judgment against William Rerimoi Lagat (hereinafter referred to as the appellant) for a declaration that he, the respondent, is the owner of plot number Kabarnet Municipality/628 measuring approximately 0.0449 hectares (hereinafter referred to as the suit property); a permanent injunction to restrain the appellant, his agents and/or servants from entering, leasing, selling, constructing and/or setting up any structure on the suit property; an order for eviction of the appellant from the suit property; costs of the suit; damages, mesne profits and interest.

2. The respondent's suit was premised on the grounds that he is the registered owner of the suit property; that on or about 30th April 2020, the appellant without any colour of right invaded the suit property, fenced it off and erected temporary structures thereon.

3. Terming the activities of the appellant in the suit property trespass to land and prejudicial to him as the registered proprietor of the suit property the respondent instituted the suit mentioned herein above, seeking the reliefs listed herein above.

4. The appellant filed a statement of defence denying the allegations levelled against him and contending that he is the rightful owner of the suit property having been allocated it by the Commissioner of lands.

5. Terming the respondent's acquisition of lease and certificate of lease in respect of the suit property fraudulent, the appellant, through the counterclaim sought judgment against the respondent for:-

   i. A declaration that he, the appellant is the lawful owner of the suit property;

   ii. A declaration that the process through which the respondent acquired the letter of allotment dated 24th February,1999, the lease dated 31st January, 2019 and the certificate of lease given on 4th February, 2020 for the suit property was fraudulent;

   iii. An order for revocation of the letter of allotment dated 24th February 1999; the certificate of lease given on 24th February, 1999 and the certificate of lease given on 4th February, 2020 to the respondent in respect of the suit property;

   iv. An order for the registration of the suit property in his favour;

   v. A permanent injunction restraining the respondent and/or his agents from interfering with his peaceful occupation and use of the suit property;

   vi. Any other relief that the honourable court may deem just to grant. (prayers/reliefs paraphrased).

6. The particulars of the pleaded fraud against the respondent and the land officials the respondent is accused of having colluded with in effectuating the fraud are particularized in paragraph 19 of the statement of defence and counterclaim thus:-

   i. The respondent presented a questionable letter of allotment to the Chief Land Registrar as a basis for issuance of a lease for the suit property;

   ii. The respondent purported to apply for allocation of the suit property when the same had already been allocated to the plaintiff;

   iii. The 4th defendant (Director of Surveys), acted on the letter of allotment issued to the respondent without ascertaining if the appellant had earlier been allocated the same plot;

   iv. Purporting to disregard and/or cancel the plaintiff's letter of allotment for the suit land without justifiable cause;

   v. Purporting to cancel the appellant's survey records for land parcel Karbanet Municipality/512 without reasonable cause;

   vi. Issuing lease and certificate of lease to the respondent who had failed to meet the terms and conditions of allotment;

   vii. Initiating the registration of the suit land under new particulars to wit Kabarnet Municipality/628 when the appellant had already been issued with the suit parcel number Kabarnet Municipality/512.

Hearing

7. When the case came up for hearing, the respondent relied on his statement recorded on 28th May 2020 and produced the lease and certificate of lease issued to him as Pexbt 8 and 9 respectively. The other

documents listed in his list of documents were merely marked for identification as he was unable to produce original documents in respect thereof.

8. Upon being cross examined by counsel for the appellant, the respondent inter alia acknowledged that he paid less consideration than the one indicated in the letter of allotment. He also admitted that he had no letter of request for survey; no beacon certificate and rent clearance certificate.

9. The foregoing notwithstanding, he maintained that his ownership documents in respect of the suit property are genuine.

10. The appellant relied on his statement dated 16th July, 2020 after it was adopted as his evidence-in-chief. He informed the court that the plot allocated to him and that allocated to the respondent are one on the ground; that he was the first one to be allocated the suit property; that he accepted the offer and after meeting the conditions set in the letter of offer, took possession of the suit property and effected developments therein.

11. The appellant produced the following documents in support of his case:-letter of allotment dated 6th January, 1998 (Dexbt 1); beacon certificate dated 24th April, 2012 (Dexbt 2); Part Development Plan (Dexbt 3); bundle of receipts for payments he made in respect of the suit property as Dexbt 4(a) to (k); clearance certificate as Dexbt 5; receipt for payment of Stand Premium as Dexbt 6; application for connection with water and the receipts in respect thereof, Dexbt 7(a) to (e); occupation certificate Dexbt 8.

12. The appellant informed the court that sometime in 2018 when he wanted to process title in respect of the suit property, he discovered that the title had been tampered with. He complained to land officials, National Land Commission and the Police. He produced the letter he wrote to the National Land Commission and Ministry of Lands and survey as Dexbt 9. He complained to the Police, DCI, vide OB No.29/24/04/2019. He wrote to the Land Registrar requesting him to restrict dealings with the suit property but the Land Registrar ignored him. He produced a copy of the caution as Dexbt 10. He also produced photographs of the developments he has carried out in the suit property as Dexbt 11 (a) to (d).

13. Maintaining that the respondent acquired his title fraudulently and without following the right channels, the appellant urged the court to grant him the reliefs sought in his defence and counterclaim.

14. At close of hearing, the respondent and the appellant filed submissions.

15. Upon considering the cases pleaded by the parties, the evidence and the submissions made in respect thereof, the Learned Trial Magistrate (LTM) *inter alia* observed/held:-

> " From the evidence given before me, both plaintiff and the defendant got allotment letters to the suit parcel. The defendant got his in 1998 and the plaintiff in 1999. The defendant despite having prior allotment moved and took possession 10 years ago as per his evidence. He didn't obtain title deed. The plaintiff moved ahead and obtained registration and now has title deed over the same piece of land. The Defendant has now alleged fraud on the part of the plaintiff but has not demonstrated it beyond doubt. Fraud is a criminal offence and the plaintiff has not been committed. Until fraud is proved on the part of the plaintiff I hold his title to be good as presented.
>
> The provisions of section 24 a and 26 of the *Land Registration Act* came to play here. I find the plaintiff's title to rank higher to the defendant's allotment documents only. The plaintiff's right over the suit property supersedes defendant's now till fraud is proven or

misrepresentation on the part of the plaintiff. Thus, I proceed to grant prayer number (1) and (2) of the plaintiff's suit. accordingly, I dismiss the defendant's counterclaim....

The parties (both) had allocation letters to the suit property. They are victims of double allocation. I will not condemn another to bear the costs of the suit. I order each party to bear own costs of the suit."

16. Dissatisfied with the judgment of the LTM, the appellant appealed to this court on 12 grounds that can be summarized to one broad ground namely, the LTM erred by allowing the respondent's case and dismissing the appellant's defence and counterclaim.

Submissions

17. The appellant filed submissions dated 27th April 2023 in which he has identified the issues for the court's determination as follows:-

That the LTM erred by:-

i. Holding that parties had allotment letters for the suit land;

ii. Failing to hold that the defendant's defence was not rebutted;

iii. Disregarding the appellant's evidence on the respondent's act of fraud;

iv. Allowing the respondent's claim without sufficient basis;

v. Failing to hold that the defendant's counterclaim was not opposed;

vi. Failing to find that the respondent's title deed was fraudulently acquired;

vii. Failing to analyze the appellant's evidence before rejecting it;

viii. What is the order as to costs.

18. On his part, the respondent filed submissions dated 17th May 2023, in which he identified the issues for the courts determination as follows:-

a. Whether the LTM properly directed himself by holding that the respondent is the absolute rightful owner of the suit property; and

b. Whether the LTM failed to consider the appellant's counterclaim.

19. In exercise of the duty vested in this court as a first appellate court, I have re-evaluated the evidence adduced before the lower court with a view of reaching my own conclusion on it. I have reminded myself that a first appellate court will not ordinarily interfere with findings of fact by the trial court unless they were based on no evidence at all, or were based on misapprehension of the evidence or unless it is demonstrated that the trial court acted upon wrong principles in reaching the finding. In that regard, see the case of *Selle & another v Associated Motor Boat Co. Ltd* (1968)E.A 123, *Mwanasokoni v Kenya Bus Service Ltd* (1982-88)1 KAR and *Kiruga v Kiruga & Another* (1988)KLR 348.

20. Having revealed the cases urged by the parties and the submissions made in respect thereof, I find the major issue for the court's determination as whether the LTM erred by allowing the respondent's case and dismissing the appellant's defence and counterclaim.

21. With regard to that issue, as pointed out herein above, the respondent instituted the suit that forms the subject matter of this suit based on the fact that at the time he instituted the suit, he was the registered

proprietor thereof. During hearing, the respondent produced a lease and a certificate of lease showing that as at the time he filed the suit he was the registered proprietor of the suit property.

22. As rightly submitted by the respondent, his registration as the proprietor conferred on him the status of an absolute and indefeasible proprietor of the suit property. However, as provided for by section 26 of the *Land Registration Act*, 2012, that status can be challenged and impeached if it is proved that the suit property was acquired fraudulently or through misrepresentation to which the proprietor is proved to be party. The status is also impeachable if it is demonstrated that the title was acquired illegally, unprocedurally or through a corrupt scheme.

23. As pointed out herein above, the appellant filed a statement of defence and counterclaim challenging the title held by the respondents on the ground that it was fraudulently acquired. The acts of the respondent and officials of the ministry of lands said to constitute fraud were particularized in paragraph 19 of the defence and counterclaim.

24. I have re-evaluated the totality of the evidence (oral and documentary) adduced in this case, including the documents that were marked for identification but not produced in evidence. In so doing, I have taken note of the fact that parties were cross examined on the contents of the documents that were marked for identification but not produced in evidence thereby eliciting evidence relevant for determination of the issues raised in the suit and this appeal.

25. One of the issues arising from the documents which were marked for identification but not produced in evidence is that the plaintiff respondent was issued with a letter of allotment in respect of the suit property. The letter of allotment issued to the respondent was issued after the appellant had earlier on been issued with a letter of allotment in respect of the same property.

26. Despite the fact that the respondent did not produce his letter of allotment for want of an original document in respect thereof, from that factual background, I am of the considered view that the LTM cannot be faulted for holding that both parties had a letter of allotment. In fact, from his own pleadings, statement of defence and counterclaim, paragraph 19 (i) (ii) and (iii), the appellant acknowledges that the respondent had a letter of allotment. He only takes issue with its legal propriety given that it was given to the respondent after the suit property had been allocated to him.

27. Being the one who desired judgment based on his contention that the letter of allotment relied on by the respondent was questionable, it behooved the Appellant to produce evidence to prove that indeed the letter of allotment was questionable. In view of the foregoing I find and hold that the respondent did not prove that the letter of allotment used by the appellant was questionable. I hasten to point out that the appellant had challenged the process that led to issuance of a lease and certificate of lease in favour of the respondent on other grounds like, failure to meet the terms and conditions of allotment.

28. With regard to that pleaded aspect of the appellant's case, a review of the totality of the evidence produced shows that the respondent did not meet the conditions stipulated in the letter of allotment which included; communication of acceptance of the conditions in the letter of allotment with 30 days of the post mark (I take this to be 24th February, 1999) and pay the amount set therein, being Kshs.13,630/-.

29. The totality of the evidence adduced in this case shows that the respondent neither accepted the conditions in the letter of allotment nor paid the amount stated therein within the time stipulated therein.

30. Whilst the respondent was required to pay Kshs. 13, 630/- in the letter of allotment, in his evidence, he informed the court that he paid Kshs. 6400/- only. No evidence of proof of payment was adduced and when payment was made, if at all it was made. More importantly, no explanation was offered by

the respondent of the circumstances upon which he ended up paying less that the amount he was supposed to pay under the letter of allotment. There was no proof of payment of stamp duty, land rent and rates which is a preliquisite for registration of land under the Stamp Duty Act and the Land Registration Act.

31. The procedure for issuance of a certificate of lease arising from a letter of allotment were espoused in the case of *Ali Mohamed Dagane (Granted Power of Attorney by Abdullahi Muhumed Dagane), suing on behalf of the Estate of Mohamed Haji Dagane) v Hakar Abshir & 3 others* [2021] eKLR thus:-

> "The question of acquisition behooves the court to trace the legal prescriptions for the issuance of an allotment letter and to adjudge the Plaintiff's acquisition from the light of the law.
>
> This court in the case of *Mako Abdi Dolal v Ali Duane & 2 others* [2019] eKLR noted that prior to the promulgation of the 2010 Constitution and the 2012 amendments to the body of Land Laws in Kenya, disposition of government land was governed by the *Government Lands Act* (Repealed). Section 4 of the Act provided as follows:
>
>> "All conveyances, leases and licenses of or for the occupation of Government Lands, and all proceedings, notices and documents made, taken, issued or drawn, shall serve as otherwise provided, be deemed to be made, taken, issued or drawn under and subject to the provisions of this Act."
>
> Power to dispose of public land was vested in two entities: The President and the Commissioner of Lands, under Sections 3 and 9 respectively. The process of the disposition of government land followed the following procedure: First, the respective municipal council in which the land to be disposed was situate had the mandate of advising the Commissioner of Lands on which portions of land could be disposed. This step would have required the responsible council to visit the area or to carry out a fact-finding mission to satisfy itself that the land was first of all government land and second that it was indeed available for disposition. See *Harison Mwangi Nyota v Naivasha Municipal Council & 20 others* [2019] eKLR
>
>> "... The question that the plaintiff seemed to raise is what role the Municipal Council of Naivasha had in the issuance of allotment letters to the defendants in 1992. According to DW1, an employee of the 1st defendant, the local authority (1st defendant) has to recommend that the land is available for allocation before an allotment letter can issue. DW13 also told the court that the Council oversees all developments in its jurisdiction and allocates land on advisory basis for the Commissioner. It seems that even if the 1st defendant issued the letters dated 1/12/1992, it was mere advisory to the Commissioner of Lands. The allotment of the land had to be ratified by the Commissioner for Lands. It is obvious even from the communication between the Municipal Council and the Office of the Commissioner of Lands that the Council played an important role in identifying what land was available for purposes of alienation."

The second step would be for the part development plan to be drawn up and approved by the Commissioner of Lands. See *Nelson Kazungu Chai & 9 Others v Pwani University College* (2014) eKLR

> "It is trite law that under the repealed *Government Lands Act*, a Part Development Plan must be drawn and approved by the Commissioner of Lands or the Minister of Lands before any unalienated Government land could be allocated. After a Part Development Plan (PDP) has been drawn, a letter of allotment based on the approved Part Development Plan is then issued to the allottee."

The third step involved the determination of certain matters by the Commissioner of lands which matters are listed under Section 11 of the *Government Lands Act* (Repealed). The matters to be determined include the upset price at which the lease of the plot would be sold, the conditions to be inserted into the lease; the determination of any attaching special covenants and the period into which the term is to be divided and the annual rent payable in respect of each period.

The fourth step would be for the gazettement of the plots to be sold, at least four weeks prior to the sale of the plots by auction under Section 13 of the *Government Lands Act* (Repealed). The notice was required to indicate the number of plots situate in an area; the upset price in respect of every plot; the term of the lease and rent payable, building conditions and any attaching special covenants.

The fifth step would be for the sale of the plots by public auction to the highest bidder. Section 15 of the *Government Lands Act* (Repealed).

The sixth step would be for the issuance of an allotment letter to the allotee. An allotment letter has been held not to be capable of conferring an interest in land, being nothing more than an offer, awaiting the fulfilment of the conditions stipulated therein by the offeree. See the decisions in: *Gladys Wanjiru Ngacha v Teresa Chepsaat & 4 others* 182/1992 (Nyeri); and in *Dr. Joseph N.K. Arap Ng'ok v Justice Moijo Ole Keiyua & 4 others* C.A.60/1997 where the Court of Appeal held as follows:

> "It has been held severally that a letter of allotment per se is nothing but invitation to treat. It does not constitute a contract between the offerer and the offeree and does not confer interest in land at all. It cannot thus be used to defeat a title of a person who is the registered proprietor of the said parcel of land."

In order for an allotment letter to become operative, the allotee was required to comply with the conditions set out therein including the payment of stand premium and ground rent within the prescribed period. See the decision in: *Mbau Saw Mills Ltd v Attorney General for and on behalf of the Commissioner of Lands) & 2 others* [2014] eKLR

> "I have considered the evidence on record and the submission of the parties and do find that a letter of allotment was issued to Mr. Joseph K. Mugambi on 21/10/1971 with a condition to accept the offer within 30 days. He did not do so and thereafter the offer lapsed 30 days after it was made in accordance with the allotment letter. Having failed to accept the offer as stipulated in the letter of allotment Mr. J.K. Mugambi did not acquire interest in the unsurveyed lorry depot and therefore had no interest to transfer to the plaintiff. This court holds that a letter of allotment does not confer any property rights to a person unless

> there is acceptance and payment of the stand premium and ground rent. In the letter dated 17/6/1988 which was written about 17 years after the allotment letter was issued, the Commissioner of Lands confirmed that the plot was allocated to Joseph M. Mugambi in 1971 for lorry depot. However, the plot had neither been paid for nor an acceptance of the offer in the allotment letter made. The implication of this letter was that the allottee had not complied with the terms of the allotment letter and therefore the offer had lapsed. The offer having lapsed, the allottee Mr. Joseph M. Mugambi did not have any interest to transfer to the plaintiff and therefore all transactions between the allottee and the plaintiff were a nullity in law."

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

> "… Secondly, all the defence witnesses were unanimous that in the normal course of events, planning comes first, then surveying follows. A letter of allotment is invariably accompanied by a PDP with a definite number."

And again, in *Nelson Kazungu Chai & 9 Others v Pwani University College* (2014) eKLR

> "Worth noting as well is that no Part Development Plan was produced to back the Appellants' claim that due process had been followed as alleged."

The seventh step, which comes after the allotee has complied with the conditions set out in the allotment letter is the cadastral survey, its authentication and approval by the Director of Surveys and the issuance of a beacon certificate. The survey process precipitates the issuance of land reference numbers and finally the issuance of a certificate of lease. *Nelson Kazungu Chai & 9 Others v Pwani University College* (2014) eKLR the court held as follows:

> "It is only after the issuance of the letter of allotment, and the compliance of the terms therein, that a cadastral survey can be conducted for the purpose of issuance of a Certificate of Lease. This procedural survey was confirmed by the Surveyor, PW3. The process was also reinstated in the case of *African Line Transport Co. Ltd v The Hon AG*, Mombasa HCCC No.276 of 2013 where Njagi J held as follows:
>
> > "Secondly, all the defence witnesses were unanimous that in the normal course of events, planning comes first, then surveying follows. A letter of allotment is invariably accompanied by a PDP with a definite number. These are then taken to the department of survey, who undertake the surveying. Once the surveying is complete, it is then referred to the Director of Surveys for authentication and approval. Thereafter, a land reference number is issued in respect of the plot."

Having evaluated in detail the necessary steps to be followed, it is emergent that a litigant basing their interest in land on the foundation of an allotment letter must provide the following proof: First, the allotment letter from the Commissioner of Lands; Secondly, and attached to the allotment letter, a part development plan; Thirdly, proof that they complied with the conditions set out in the allotment letter, primarily that the stand premium and ground rent were paid, within the specified timeline. It would also help a litigant's case,

although this may not be mandatory based on the stage of the transaction, to have a certified beacon certificate.

Now, in the present case, the court confirms that the Plaintiff did indeed file a letter of allotment dated 7th April 1994 and Referenced 111303/VIII. The allotment letter was issued by the Commissioner of lands as it bears his signature. The problem though is that the allotment letter was issued to one Mohamed Shagana and not the deceased Mohamed Haji Dagane. The Plaintiff has however provided an affidavit sworn by the said Mohamed Haji Dagane on 18th April 2008 averring that his name had been misspelt in the allotment letter and that he had already written to the Commissioner of Lands for a rectification of the same. The court would have no reason to disprove the Plaintiff's averment, save that the problem seems to rear its head again. The same is discussed later.

The filed allotment letter does indeed have a part development plan attached, satisfying the second condition.

On the third condition however, a letter drawn by the deceased, Mohamed Haji Dagane on 19th November 2008 and received on the following day, 20th November 2008 throws a spanner into the works. In the letter, the deceased admits that he did not comply with the conditions set out in the allotment letter, specifically that he did not pay the stand premium and ground rent on account of his ill health. Now, the allotment letter referred to, the one issued 7th April 1994 required the payment of a stand premium of Four Thousand Six Hundred (Ksh. 4,600) and other payments amounting to Two Thousand Nine Hundred and Fifty (Ksh. 2,950) all in total amounting to Seven Thousand, Five Hundred and Fifty Shillings (Ksh.7,550). Clause 2 of the allotment letter required the payment of the amount via banker's cheque within 30 days. Thus, the offer was only open up to 30 days after 7th April 1994, meaning sometimes in early May 1994. Clearly, when the deceased was unable to pay the requisite fees by that day, the offer lapsed. See *Rukaya Ali Mohamed v David Gikonyo Nambachia & another* Kisumu HCCA. 9/2004 where Warsame J held that:

> " once allotment letter is issued and the allottee meets the conditions therein, the land in question is no longer available for allotment since a letter of allotment confers absolute right of ownership or proprietorship unless it is challenged by the allotting authority or is acquired through fraud, mistake or misrepresentation or that the allotment was out rightly illegal or it was against public interest".

In the present case, upon lapse of the offer contained in the allotment letter, the land was free to be allotted to someone else. It appears that this is what happened because the letter drawn by the deceased, dated 19th November 2008 was one requesting the Commissioner of Lands to re-allocate the Suit Property to the deceased. Note that in this letter, the deceased signs off as Mohamed Shagana. This little fact makes the court question the earlier affidavit supposedly to the effect that Mohamed Shagana, to whom the allotment letter was issued, is one and the same person as the deceased, Mohamed Haji Dagane. Why would the deceased, who vide the affidavit of 18th April 2008 averred that he had already written to the Commissioner of Lands to rectify his misspelt name on the allotment letter, in November 2008 sign off as Mohamed Shagana?

Be that as it may, the Commissioner of Lands did reply to the letter drawn by Mohammed Shagana, curiously on the very next day, being 20th November 2008 acknowledging receipt of the request and promising to communicate on the issue at a later date. It would appear that that date never came, and no allotment letter was issued to the deceased in 2008 or

thereafter. As demonstrated, by this time, Mohammed Shagana did not hold interest in the Suit Property, the offer having lapsed in May of 1994.

On the premises, the beacon certificate issued to the deceased on 15th December 2005 is a sham and was issued illegally. On the whole, the Plaintiff has failed to satisfy the Court that the Suit Property forms part of the estate of the deceased and as such, the orders sought by the Plaintiff cannot be granted."

32. The Court of Appeal in the case of *Munyu Maina v Hiram Gathiha Maina* [2013] eKLR, held as follows:

> "We state that when a registered proprietor's root of title is under challenge, it is not sufficient to dangle the instrument of title as proof of ownership. It is this instrument of title that is in challenge and the registered proprietor must go beyond the instrument and prove the legality of how he acquired the title and show that the acquisition was legal, formal and free from any encumbrances including any and all interests which need not be noted on the register."

33. Section 80 (1) of the *Land Registration Act* provides that:-

> "Subject to subsection (2), the court may order the rectification of the register by directing that any registration be cancelled or amended if it is satisfied that any registration was obtained, made or omitted by fraud or mistake."

34. From the above provisions, it is clear that the court has powers to order rectification of a register by directing that the registration be cancelled or amended if it is satisfied that any registration was obtained, made or omitted by fraud or mistake.

35. In applying the legal principles espoused in the case *Mohamed Dagane v Hakar Abshir & 3 others* to the circumstances of this case, I find and hold that the respondent did not demonstrate to the court that he followed the requisite legal process to obtain his certificate of lease. The evidence adduced in this case, shows that the applicable laws and procedures were flouted in effecting registration of the lease in favour of the respondent. In the circumstances, I find the lease issued to the respondent to be impeachable on ground of fraud, which was sufficiently proved through evidence showing that the respondent did not meet the conditions set in the letter of allotment. If the LTM had considered that fact, he would have reached a different decision.

36. The upshot of the foregoing is that the appeal has merit and is allowed as prayed.

37. Orders accordingly.

JUDGMENT DATED, SIGNED AND DELIVERED AT ITEN THIS 26TH DAY OF JUNE, 2023.

L. N. WAITHAKA

JUDGE

Judgment delivered virtually in the presence of:-

Mr. Esikuri holding brief for Mr. Kipnyekwei for the Appellant

Mr. Chepkilot for the Respondent

Court Asst.: Christine