



People Like Us CBO (Suing through its officials Hussein Mohamed Abdinoor (Chairman) Aisha Adan (Secretary) and Aisha Halkanot (Treasurer) v Kimaru & 4 others (Environment & Land Case 016 of 2021) [2025] KEELC 1423 (KLR) (20 March 2025) (Judgment)

Neutral citation: [2025] KEELC 1423 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ISIOLO
ENVIRONMENT & LAND CASE 016 OF 2021
JO MBOYA, J
MARCH 20, 2025**

BETWEEN

PEOPLE LIKE US CBO (SUING THROUGH ITS OFFICIALS HUSSEIN MOHAMED ABDINOOR (CHAIRMAN) AISHA ADAN (SECRETARY) AND AISHA HALKANOT (TREASURER) PLAINTIFF

AND

**ERIC MUREITHI KIMARU 1ST DEFENDANT
PHYSICAL PLANNER, ISIOLO COUNTY 2ND DEFENDANT
LAND REGISTRAR, ISIOLO COUNTY 3RD DEFENDANT
COUNTY GOVERNMENT OF ISIOLO. 4TH DEFENDANT
ATTORNEY GENERAL 5TH DEFENDANT**

JUDGMENT

1. The Plaintiff, which is a community based organization [CBO] approached the court vide Plaint dated the 31st August 2021 and wherein the Plaintiff has sought for the following reliefs [verbatim]:
 - a. A declaration that the parcel of land known as PDP NO. ISL/117/98/198 measuring approximately 30 acres belongs to the plaintiff CBO.
 - b. A declaration that the Certificate of lease to parcels of land no PDP NO.ISL/117/98/198 currently registered in the 1st defendants name be canceled immediately and returned into the names of the plaintiffs respectively.
 - c. An order of permanent injunction restraining the defendants, their agents, servants or anyone acting on their behalf from



entering,cultivating,developing,utilizing,fencing,alienating,selling,constructing or in any other way interferig with the plaintiffs', parcels of land known as PDP NO. ISL/117/98/198.

- d. Costs, interest and any other relief this Honourable court deems just and fit to grant.
 - e. Any other reliefs that this Honourable court may deem just and fit to grant.
2. Upon being served with the Plaint and summons to enter appearance, the 2nd and 4th Defendants duly entered appearance and thereafter filed a statement of defence dated the 23rd November 2021; and wherein the 2nd and 4th Defendants denied the claims by the Plaintiff. Furthermore, the 2nd and 4th Defendants contended that the documentation including the minutes of the county council of Isiolo [now defunct] sought to be relied upon by the Plaintiff are fraudulent and forgery.
 3. The 3rd and 5th Defendants also entered appearance and also filed a statement of defence. Similarly, the 3rd and 5th Defendants denied the claim[s] by the Plaintiff. For good measure, the 3rd and 5th Defendants posited that the Plaintiff shall be invited to strict proof.
 4. The 1st Defendant neither entered appearance nor filed any statement of defence. To this end, the Plaintiff [sic] applied for and/or obtained an interlocutory judgment against the 1st Defendant. Notably, the interlocutory judgment was entered on the 24th October 2022.
 5. The instant matter proceeded for hearing whereupon the Plaintiff called two [2] Witnesses; whereas the 2nd and 4th Defendants called one witness. The 3rd and 5th Defendants similarly called one witness.
 6. The Plaintiff's case rested on the testimony of two witnesses, namely; Hussein Muhamed Abdinoor. Same testified as PW1. It was the testimony of the witness that same is the chairman of the Plaintiff organization. Furthermore, the witness averred that the organization was registered in March 1996.
 7. It was the further testimony of the witness that the organization was issued with a certificate of registration. Nevertheless, the witness averred that the certificate of registration was lost and/or displaced. In this regard, the witness averred that the Plaintiff was thereafter obliged to procure another certificate of registration. To this end, the witness averred that the Plaintiff applied for and was issued with a certificate of registration and which certificate was tendered and produced before the court.
 8. Additionally, the witness averred that same has since recorded a witness statement. The witness referenced the witness statement dated the 31st August 2021 and which statement the witness sought to adopt and rely on as his evidence in chief. Instructively, the witness statement was thereafter adopted and constituted as the evidence in chief of the witness.
 9. Moreover, the witness referenced the list and bundle of documents dated the 31st August 2021 and thereafter sought to tender and produce the various documents as exhibits before the court. However, learned counsel for the 2nd and 4th Defendants objected to the production of documents number[s] 3 to 12, respectively. For good measure, the objection by learned counsel for the 2nd and 4th Defendants was upheld.
 10. Be that as it may, the witness proceeded to and produced documents number 1 and 2 respectively and which documents were duly marked as Plaintiffs exhibits P1 to P2, respectively.
 11. On the other hand, the rest of the documents were marked for identification as PMFI 3 to 12, respectively.
 12. The witness also referenced and highlighted the Plaint dated the 31st August 2021; as well as the verifying affidavit. Thereafter, the witness sought to adopt and rely on the contents of the Plaint and the reliefs sought thereunder;



13. In particular, the witness averred that the Plaintiff herein is seeking for a declaration that same [Plaintiff] is the lawful proprietor of the suit property on the basis of a Part Development Plan [PDP] Number ISL/117/98/198. To this end, the witness implored the court to proceed and grant the various reliefs sought at the foot of the Plaint.
14. On cross examination by learned counsel for the 2nd and 4th Defendants, the witness averred that same is the chairman of the organization. Furthermore, the witness stated that the organization has since held a meeting and authorized the filing of the suit. Nevertheless, the witness added that the minutes and/or authority of the organization has not been filed with the court.
15. It was the further testimony of the witness that the organization was registered with a certificate of registration in March 1996. However, the witness testified that the certificate of registration was lost and the organization was advised to procure another certificate of registration. Meanwhile, the witness averred that the certificate of registration which has been tendered and produced before the court was issued on the 14th May 2019.
16. Whilst still under cross examination, the witness averred that the certificate of registration which same has tendered and produced before the court does not indicate that same was a replacement of the previous certificate of registration.
17. It was the further testimony of the witness that the organization applied to the county council of Isiolo [now defunct] to be allocated the suit land. In this regard, the witness averred that the county council of Isiolo indeed proceeded to and allocated the land to the organization. To this end, the witness testified that the application by the Plaintiff was duly approved vide minutes dated the 23rd September 1997. [See MFI P13].
18. Additionally, the witness averred that even though same has tendered and marked for production the the minutes of the county council of Isiolo, same [witness] is not aware that the said minutes are forgeries.
19. It was the further testimony of the witness that the suit property which is being claimed by the 1st Defendant bears registration number Isiolo Township/Block 2/3. In particular, the witness added that the said parcel of land forms the basis of their claim before the court.
20. It was the further testimony of the witness that the Plaintiff herein has never been issued with a certificate of lease. On the contrary, the Plaintiff indicated that the 1st Defendant has however been issued with a certificate of lease over and in respect of the suit property.
21. Furthermore, the witness testified that the Plaintiff's claim to the suit property is premised on Part Development Plan [PDP] No. ISL/117/98/198, which represents the suit property.
22. Whilst still under cross examination by learned counsel for the 2nd and 4th Defendants, the witness averred that the 1st Defendant has been issued with a certificate of lease. However, the witness acknowledged that the Plaintiff herein does not have a certificate of lease.
23. On the other hand, the witness testified that the Plaintiff was issued with a letter of allotment by the county council of Isiolo. Nevertheless, the Witness acknowledged that same [Witness] has neither tendered nor produced the letter of allotment.
24. On cross examination by learned counsel for the 3rd and 5th Defendants, the witness averred that the Plaintiff herein applied to the county council of Isiolo [now defunct] to be allocated the suit plot. Furthermore, the witness testified that the application for allotment was approved by the county council of Isiolo.



25. It was the further testimony of the witness that the county council of Isiolo [now defunct] also proceeded to and approved the Part Development Plan [PDP]. To this end, the witness referenced the minutes of county council of Isiolo dated the 13th October 1998.
26. It was the further testimony of the witness that the minutes relates to the approval of the Part Development Plan. However, the witness added that the names of the persons being allocated plot[s] are not contained on the Part Development Plan.
27. It was the further testimony of the witness that the Part Development Plan [PDP] which has been placed before the court indicates that same was prepared by an illegal person.
28. It was the further testimony of the witness that the Plaintiff herein applied for allotment in the year 1997. Nevertheless, the witness averred that even though the Plaintiff applied for allotment in 1997, the Plaintiff has not been given any allotment by the county council of Isiolo.
29. Whilst still under cross examination by learned counsel for the 2nd and 4th Defendants, the witness averred that the Part Development Plan [PDP] was prepared after the land was allocated to the Plaintiff.
30. Other than the foregoing, the witness averred that the Plaintiff herein conducted a search at the land registry and thereafter discovered that the land in question has since been registered in the name of the 1st Defendant. Furthermore, the witness averred that the registration of the land in the name of the 1st Defendant is the basis upon which the Land Registrar has been sued.
31. Additionally, the witness averred that even though the land in question was allocated to the Plaintiff, the Plaintiff does not have a letter of allotment. In addition, the witness averred that same [Plaintiff] also does not have a beacon certificate.
32. The second witness who testified on behalf of the Plaintiff was Ibrahim Sheikh Hamo. It was the testimony of the said witness that same is a records clerk at Isiolo county government. Furthermore, the witness averred that same has been summoned by the Deputy Registrar of the court.
33. The witness further referred to the minutes dated the 13th October 1998 and thereafter sought to tender and produce same as Exhibits before the court. There being no objection to the production of the said minutes, same were produced as Plaintiff's Exhibit P7.
34. The witness further averred that the minutes which same has tendered and produced before the court relates to the approval of the PDPS by the full council of the County Council of Isiolo [now defunct]. In any event, the witness indicated that the minutes are signed.
35. On cross examination, by learned counsel for the 2nd and 4th Defendants, the witness stated that same was a records officer. However, the witness added that same retired in the year 2015.
36. It was the further testimony of the witness that the approval of Part Development Plan [PDP] do not normally give names. In this regard, the witness averred that the Part Development Plan by the Plaintiff does not bear the name of the Plaintiff.
37. With the foregoing testimony, the Plaintiff's case was closed.
38. The 2nd and 4th Defendant's case is premised of the evidence of one witness, namely; Yusuf Muhamed. Same testified as DW1.
39. It was the testimony of the witness that same is currently the county executive committee member [CEC] for agriculture, livestock, fisheries and special programs. Furthermore, the witness averred that previously same was the chief officer for lands and physical planning.



40. It was the further testimony of the witness that same recorded and filed a witness statement dated the 21st October 2022 and which witness statement the witness sought to adopt as his evidence in chief. Instructively, the witness statement was duly adopted and constituted as the evidence in chief of the witness.
41. Moreover, the witness referenced the list and bundle of documents dated the 22nd October 2022 containing One [1] document and which document the witness sought to tender and produce as an exhibit before the court. There being no objection to the production of the said document, same [Document] was adduced and admitted as exhibits D1.
42. In particular, the witness averred that exhibit D1 was an extract of the minutes dated the 23rd September 1997 from the county council of Isiolo [now defunct]. Additionally, it was the testimony of the witness that the minutes which were tendered and produced on behalf of the Plaintiff herein are forgeries. For good measure, the witness averred that item number 16 in the minutes produced by the Plaintiff has been superimposed on the correct minutes number 16.
43. In addition, the witness testified that the correct minutes number 16 touches on and relates to an application for a plot by one, namely; Gideon S Muchiri and not the Plaintiff herein.
44. On cross examination by learned counsel for the Plaintiff, the witness averred that the Plaintiff herein was never allocated the suit property. Furthermore, the witness averred that even though same has indicated at paragraph 3 of his witness statement that the Plaintiff was registered in the year 2004, same [witness] is not in a position to confirm the date of registration of the Plaintiff.
45. Whilst still under cross examination, the witness averred that entry number 16 in the minutes tendered and produced by the Plaintiff is a forgery.
46. On cross examination by learned counsel for the 3rd and 5th Defendants, the witness averred that the minutes that have been tendered and produced on behalf of the 2nd & 4th Defendants represent the correct status of the minutes of county council of Isiolo [now defunct].
47. It was the further testimony of the witness that the minutes relied upon by the Plaintiff herein have been forged to the extent that the original Applicant has been replaced. Nevertheless, the witness averred that the original Applicant was Muchiri and not the Plaintiff.
48. With the foregoing testimony, the 2nd and 4th Defendants case was duly closed.
49. The 3rd and 5th Defendants case is anchored on the evidence of one witness, namely; Rufus Karima Kalama. Same testified as DW2.
50. It was the testimony of the witness that same is the Chief Land Registration officer in charge of Isiolo and Marsabit counties. Furthermore, the witness averred that same is conversant with L.R No. Isiolo Township/Block 2/3. In particular, the witness averred that the suit property is situated under his [witness] area of jurisdiction.
51. It was the further testimony of the witness that the suit property is currently registered in the name of Eric Murithi Kimaru, who is the 1st Defendant. Moreover, the witness averred that the allocating authority is either the County Government of the National Government.
52. Furthermore, it was the testimony of the witness that in respect of the instant matter, the office of the Land Registrar Isiolo; received a letter from the office of the director of land administration forwarding a lease in favour of the 1st Defendant. To this end, the witness referenced the letter dated the 13th August 2018.



53. It was the further testimony of the witness that upon receipt of the lease which was forwarded vide letter dated the 13th August 2018, the office of the Land Registrar prepared, engrossed and issued a certificate of lease in favor of the 1st Defendant.
54. In addition, the witness averred that the office of Land Registrar- Isiolo does not use Part Development Plan [PDP]. In particular, it was averred that the issue of PDP are dealt with by the office of director of land administration.
55. On cross examination by learned counsel for the Plaintiff, the witness averred that the suit property is situate within the territory of the County Government of Isiolo. Nevertheless, the witness averred that allocation of land falls within the mandate of the County Government or the National Government. However, in this case, the witness posited that the land was allocated by the National Government through the office of the Commissioner of lands [now defunct].
56. On cross examination by learned counsel for the 2nd and 4th Defendants, the witness averred that allocation of land falls within the purview of the National Land Commission. However, the witness clarified that before the promulgation of the Constitution 2010 allocation of land was the mandate of the commissioner of lands [now defunct].
57. With the foregoing testimony, the 3rd and 5th Defendants case was duly closed.
58. The advocates for the parties covenanted to file and exchange written submissions. In this regard, the court ventured forward and circumscribed timelines for the filing of written submissions.
59. The Plaintiff filed written submissions dated the 9th May 2024 and wherein the Plaintiff has raised and canvassed two [2] salient issues, namely; that the Plaintiff herein was lawfully allocated the suit property and thus the Plaintiff is the bona fide owner of the suit property. In any event, the Plaintiff has contended that the allotment of the suit property in her favour is underpinned by the PDP number ISL/117/98/198.
60. Secondly, the Plaintiff has contended that even though same is the lawful owner and/or proprietor of the suit property, the 2nd to 5th Defendants have since conspired and thereafter caused the suit property to be alienated, demarcated and thereafter registered in the name of the 1st Defendant. To this end, it has been posited that the certificate of title issued in favour of the 1st Defendant is laced with fraud, irregularity and illegality.
61. Arising from the foregoing, the Plaintiff has implored the court to find and hold that what constitutes the suit property lawfully belongs to the Plaintiff. In this regard, the Plaintiff has invited the court to revoke and cancel the impugned certificate of lease in favour of the 1st Defendant and thereafter to issue certificate of lease in favour of the Plaintiff.
62. The 2nd and 4th Defendants filed written submissions dated the 15th May 2024 and wherein same have submitted that the Plaintiff herein failed to place before the court plausible, cogent and credible evidence to demonstrate that same is the lawful owner and/or proprietor of the suit property.
63. It was submitted that even though the Plaintiff contends that same was allocated what constitutes the suit property, the Plaintiff has been unable to tender and produce the application letter, the minutes of approval [if any] by the county council of Isiolo, the duly approved PDP or even the letter of allotment [if any]. In the absence of the foregoing documents, it has been submitted that the Plaintiff failed to discharge the burden of proof which was cast upon the Plaintiff.
64. Secondly, the 2nd and 4th Defendants have contended that the Plaintiff herein cannot adopt and reference a document which were never tendered and produced before the court as exhibits. For



coherence, it has been submitted that a document which was marked for identification does not form part of the record of the court and hence same [document marked for identification] is not part of the evidence to be relied upon before a court of law.

65. To buttress the foregoing submissions, the 2nd and 4th Defendants have cited and referenced various decisions inter-alia *Bilia Matiangi v Kisii Bottlers Ltd & Another* [2021]eKLR; *Kenneth Nyaga Mwigwe v Austine Kiguta & 2 Others* [2015]eKLR and *Desraj Sharma v Reginam* [1953] 19 EACA 310, respectively.
66. Arising from the foregoing, the 2nd and 4th Defendants have invited the court to find and hold that the Plaintiff's suit is misconceived and legally untenable.
67. The 3rd and 5th Defendant did not file any written submissions. For good measure, no such submissions are discernible from the record of the court.
68. Having reviewed the pleadings, the evidence [both oral and documentary] and upon consideration of the written submissions filed on behalf of the respective parties, I come to the conclusion that the determination of the subject dispute turns on three [3] salient issues, namely; whether the Plaintiff has established and demonstrated her entitlement to the suit property or otherwise; whether the Plaintiff has proven the plea of fraud and/or illegality [if any] against the Defendants; and what reliefs [if any] ought to be granted.
69. Regarding the first issue, namely; whether the Plaintiff herein has established her entitlement to the suit property, it is imperative to note that what constitutes the suit property was hitherto part of the trust land which fell within the jurisdiction of county council of Isiolo [now defunct].
70. To the extent that what constitute[s] the suit property was hitherto part of the trust land, which was being administered by the designated local authorities and in this case, the county council of Isiolo [now defunct], there is no gainsaying that any Applicant who was desirous to be allocated land was obligated to make the application for allotment of land to the county council.
71. Additionally, it is worthy to underscore that the application for allotment of land would ordinarily be in writing. Upon receipt of such application for allotment of land, the county council of isiolo would be called upon to convene the requisite committee meeting[s] to deliberate on the application for allotment and thereafter discern whether the application for allotment is meritorious and worthy of approval or otherwise. [See Section 53 of the Trust [Land Act](#)].
72. In the event that the county council of Isiolo would have approved the application for allotment, the approval would thereafter be escalated to the commissioner of land [now defunct] who had the mandate to issue the letter of allotment albeit on behalf of the county council of Isiolo.
73. Nevertheless, it is imperative to highlight that the commissioner of land, [now defunct] could only issue the letter of allotment with the consent and approval of the county council of Isiolo [now defunct].
74. The procedure pertaining to allotment and/or alienation of land which was hitherto part of the trust land vested in the local authorities, the county council of Isiolo not excepted. The said procedure was highlighted by the Court of Appeal in the case of *Ethics and Anti-Corruption vs Eunice N. Mogalia and another* Civil Appeal No. 39 of 2019 [court of appeal at Kisumu] [unreported] where the Court of Appeal stated at paragraph thus;

“ 32. The first respondent was purportedly allocated government land under the government lands act and was to be issued with a certificate of lease in the form



of a grant under the registration of titles act. How a government grant that was issued and accepted by the 1st respondent under the government lands act pursuant to which the government was to be the lessor changed to be the lease under the registered land act under which the municipal council of Kakamega became the lessee is a mystery.

As we have already stated, the government land act vested in the president and the commissioner of lands power to alienate government land as long as the procedure laid out in the act was followed. Trust land act on the other hand vested in the county council the power to alienate the land in their respective counties and the commissioner of lands had no power to alienate the same save as directed by the county council through a resolution. In the circumstances, we do not see how the letter of allotment dated 31st July 1998 under which the commissioner of lands offered to the 1st respondent a grant of the government land could have given rise to the lease dated 2nd June 2000 of trust land that was vested in the municipal council of Kakamega. So under what regime of the law was the commissioner of lands acting when he alienated the suit property? We ask this question because the two legal regimes, that is the government lands act and the trust land act have different processes as regards to alienation of land". [Underlining Supplied].

75. Additionally, the procedure to be followed in alienating what was hitherto trust land and which fell within the jurisdiction of the local authorities [now defunct] was also elaborated upon in the case of Rinya Hospital Ltd v the Town Council of Awendo [2010]eKLR, where the court stated and held thus;

However, the evidence of DW3 revealed that the County Council of Migori had not authorized the Commissioner of Lands to allocate the suit land to the plaintiff. Under section 53 of the Trust Land Act, the Commissioner of Lands administers Trust land of each county council as an agent for the council. He can only alienate such land with express authorization of the concerned county council. The PDP that was produced in court did not indicate that the County Council of Migori had given its approval. There was no evidence of any favourable comments having been made by the authorities concerned except that of the Director of Physical Planning. It was upon the plaintiff to prove that the County Council of Migori and all other relevant offices gave favourable comments before the Grant was issued.

76. Bearing in mind the elaborate process that has been highlighted in the decisions [supra], it is now apposite to revert to the instant matter and to discern whether the Plaintiff has been able to prove that the suit property was duly allocated unto her or at all.
77. To start with, the Plaintiff contended that same applied to be allocated what constitutes the suit property. Furthermore, the Plaintiff averred that its application was duly acted upon and approved by the county council of Isiolo [now defunct].
78. However, it is not lost on this court that the Plaintiff herein neither tendered nor produced a copy of the application letter, which is said to have been made to the county council of Isiolo. Pertinently, the production of a copy of the application letter could have confirmed whether or not the Plaintiff indeed made the application for allotment of land.
79. Moreover, the Plaintiff contended that the application was acted upon and approved by the county council of Isiolo [now defunct]. However, there is no gainsaying that the Plaintiff did not produce a



copy of the minutes [if any] of the county council of isiolo relating to [sic] the approval of the Plaintiff's request for allotment of land.

80. To my mind, the failure to tender and produce the minutes of the county council of isiolo [now defunct] negates the Plaintiffs claim that the application for allocation of land was duly approved.

81. Thirdly, it is important to highlight that the Plaintiffs claim before the court is predicated on [sic] PDP Number ISL/117/98/198. Nevertheless, it is imperative to recall and reiterate that PW1 testified that the PDP which same had tendered and produced before the court bore the comments that same was prepared by an illegible person. To this end, what becomes apparent is that the PDP is vitiated and thus incapable of underpinning a claim for ownership of land.

82. To contextualize the evidence tendered PW1 as pertains to the PDP, it is imperative to reproduce a segment of the evidence whilst under cross examination by learned counsel for the 3rd and 5th Defendants.

83. For ease of appreciation, the evidence is reproduced as hereunder;

“PDP No's appear on the minutes of 13th October 1998 although our name does not appear.

The PDP indicates that it was prepared by an illegible person. I do not have the original.

The PDP is not indicated that it has been certified as a true copy”.

84. My understanding of the testimony of PW1 is to the effect that the person who purported to generate and prepare the impugned PDP was not authorized to do so. In this regard, the PDP which was prepared by an illigible person is void, illegal and invalid for all intents and purposes.

85. The importance of a PDP in the process of allocation and/or alienation of land cannot be gainsaid. To this end, it is imperative to take cognizance of the holding of the Supreme Court of Kenya [the apex Court] in the case of Dina Management Limited v County Government of Mombasa & 5 others (Petition 8 (E010) of 2021) [2023] KESC 30 (KLR) (Constitutional and Human Rights) (21 April 2023) (Judgment); where the Court stated thus;

104. The procedure for the allocation of unalienated land is laid out by the Environment and Land Court in Nelson Kazungu Chai & 9 others v Pwani University [2014] eKLR as follows:“...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 for 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 PDP is then issued to the allottees.

131. 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 requirement was confirmed by the surveyor, PW3. The process was also reinstated in the case of African Line Transport Co Ltd v Attorney General, 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 132. A



part development plan (PDP) can only be prepared in respect to Government land that has not been alienated or surveyed...”

105. This process is restated in *African Line Transport Co Ltd v Attorney General, Mombasa*, HCCC No 276 of 2003 [2007] eKLR where it was held that planning comes first, then surveying. A letter of allotment is invariably accompanied by a PDP with a definite number, which would then be taken to the Department of Survey for surveying. Thereafter, it is then referred to the Director of Surveys for authentication and approval. It is after that process that a land reference number is issued in respect of the plot.
106. We note that the suit property was allocated to HE Daniel T Arap Moi who was not a party to the suit. The 2nd to 6th respondents on the other hand at the trial court in the replying affidavit of Gordon Odeka Ochieng in response to ELC Petition 12 of 2017 stated that certain documents that were required to support the allocation of the suit property to HE Daniel T Arap Moi were missing. These were, “the letter of application addressed to the Commissioner of Lands seeking to be allocated the suit land; and a Part Development Plan (PDP) showing the suit property in relation to the neighbouring parcels of land.”
107. We are careful to note that this court has no jurisdiction to revisit the factual findings of the superior courts, and we are limited to the court’s jurisdiction under article 163(4)(a) in this case. It has not been disputed that indeed there was no evidence produced of the letter to the Commissioner of Lands seeking allocation of the suit property by the first registered owner, and there was no PDP before the survey was done. We therefore agree with the trial court and the appellate court that the allocation of the suit property to HE Daniel T Arap Moi was irregular.
86. Other than the fact that the PDP being relied upon by the Plaintiff was prepared by an illegible person, there is also the question that the Plaintiff herein has neither been issued with nor granted a letter of allotment. In this regard, it is evident that the Plaintiffs claim touching on and concerning the suit property has been made in vacuum.
87. Suffice it to underscore that the issuance of a letter of allotment is one of the preliminary requirements towards ownership of land. Pertinently, one must be issued with a letter of allotment; comply with the terms thereof and thereafter procure a certificate of lease and/or title, issued under the relevant statute. It is only then that title to land comes into play.
88. To underscore, the foregoing exposition of the law, it suffices to adopt and reiterate the established and trite [hackneyed position in the case of *Wreck Motor Enterprises v Commissioner of Lands & 3 others* [1997] eKLR, where the court of appeal stated as hereunder;

Title to landed 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 title document pursuant to provisions held. See *Dr. Joseph N.K. Arap Ng’ok v Justice Moijo ole Keiwua & 4 Others*, Civil Application No. NAI.60 of 1997 (unreported).
89. Lastly, it is important to point out that one, the Plaintiff herein not excepted can only approach a court of law to protect and vindicate lawful rights that have accrued and accumulated and not otherwise. For good measure, a court of law, is only obligated to protect and vindicate proprietary right that have accrued to a person but not to give right[s] which have not been acquired in accordance with the law.



90. Despite the foregoing, the Plaintiff who has neither procured nor obtained a letter of allotment is before this court seeking to be proclaimed as the lawful and legitimate proprietors of the suit property. To my mind, the suit by and on behalf of the Plaintiff is premature and misconceived.
91. To buttress the foregoing legal position, it is expedient to reference the decision of the Court of Appeal in the case of Nelson Kazungu Chai & 9 others v Pwani University College [2017] KECA 135 (KLR), where the court stated as hereunder;
22. Before we conclude, we need to say something about Dr. Khaminwa's submission about the appellants' human rights being violated, and also on forceful evictions. A right can only be protected when it exists in reality and not where it remains an illusion or a mere expectation. Right to property is not one of those rights that inhere to every human being upon birth. They are acquired in different ways after one comes into this world. One cannot acquire property rights over another's property other than in a manner prescribed in law. In this case the appellants' claim to the suit property was in our view merely aspirational or rhetorical. This is so both under our very progressive Constitution and also under International Law. Indeed other than call in aid International Law, learned counsel Dr. Khaminwa did not cite any specific instrument that the appellants can leverage on to elevate the appellant's right to practice and enjoy their culture on the respondent's property over the respondent's rights under Article 40 of the *Constitution*. In the absence of any right under the doctrine of legitimate expectation and of any other valid colour of right, the trial court could not have arrived at any other finding. Our conclusion is that the learned Judge arrived at the right decision based on the evidence placed before him, and he cannot be faulted.
92. Flowing from the foregoing, my answer to issue number one [1] is to the effect that the Plaintiff herein has neither established nor proven any lawful rights and or interest to the suit property. In the absence of proven proprietary rights, the Plaintiff has no entitlement to the suit property.
93. Next is the issue of whether the Plaintiff has proven the allegations pertaining to fraud and illegality in the issuance of the certificate of lease in favour of the 1st Defendant or otherwise.
94. Pertinently, the Plaintiff contended that even though what constitutes the suit property had been allocated unto her, the 2nd to 5th Defendants engaged in illegal activities and have since proceeded to and allocated what constitute[s] the suit property to the 1st Defendant. It was contended that the allocation under reference was undertaken without due consideration to the Plaintiffs rights and interests over the property.
95. Additionally, the Plaintiff has contended that following from the illegal allotment, the 1st Defendant has since been issued with a certificate of lease over and in respect of the suit property. To this end, the Plaintiff has posited that the impugned certificate of lease is a process anchored on fraud and conspiracy.
96. Arising from the foregoing, what I hear the Plaintiff to be stating is that the certificate of title held by and in the name of the 1st Defendant is fraudulent, irregular and thus illegal. In this regard, the Plaintiff therefore implores the court to invalidate the certificate of lease on account of being a fraud.
97. Notwithstanding the position taken by and on behalf of the Plaintiff, DW2 who is the Chief Land Registration Officer- Isiolo and Marsabit Counties, respectively; attended court and testified as DW2.
98. For ease of appreciation, the testimony of DW2 was as hereunder;

According to our record we have, the letter forwarding the lease document on the name of Eric Murithi Kimaru. The allocating authority was either the national government or the



county government. But in accordance with our record, it is the national government that allocated the plot to Mr. Eric Mureithi Kimara.

He had the ownership process done at the head quarters by the directorate of land administration by a letter dated 13th August 2018. The document which were forwarded to the district land registrar, Isiolo. The document was received in our office on the 28th March 2018. The certificate of lease dated the 28th March 2018 was issued to Mr. Eric Mureithi Kimara. The parcel of land is still registered in his name. I wish to produce the certificate document in respect to that parcel of land.

99. The foregoing evidence by DW2 was neither challenged nor impeached by the Plaintiff. In any event, it is worth recalling that the Plaintiff herein had neither been allocated what constitute[s] the suit property or at all.
100. Can the Plaintiff implead fraud and illegality? To my mind, the Plaintiff herein had accrued no lawful rights and/or interest over what comprises of the suit property. In the absence of any proprietary rights, the Plaintiff cannot be heard to allege fraud and illegality.
101. Other than the foregoing, it is imperative to underscore that whosoever alleges fraud must not only plead and particularize fraud; but same must venture forward and place before the court plausible, cogent and credible evidence to prove fraud. For coherence, proof of fraud must be strictly done and in any event, to a standard of proof that is slightly above the balance of probabilities.
102. Simply put, the standard of proof as pertains to the plea of fraud, which is quasi-criminal is the intermediate standard. Notably, it is the standard that lies in between the balance of probabilities and beyond reasonable doubt.
103. In the case of *Kuria Kiarie v Sammy Magera* [2018] eKLR, the Court of Appeal elaborated the necessity to plead and particularize fraud and furthermore, the requisite standard to be proven as pertains to fraud.
104. For coherence, the Court stated as hereunder;
 25. The next and only other issue is fraud. The law is clear and we take it from the case of *Vijay Morjaria vs Nansingh Madhusingh Darbar & Another* [2000] eKLR, where Tunoi, JA. (as he then was) stated as follows:

“It is well established that fraud must be specifically pleaded and that particulars of the fraud alleged must be stated on the face of the pleading. The acts alleged to be fraudulent must, of course, be set out, and then it should be stated that these acts were done fraudulently. It is also settled law that fraudulent conduct must be distinctly alleged and distinctly proved, and it is not allowable to leave fraud to be inferred from the facts.” [Emphasis added].

The same procedure goes for allegations of misrepresentation and illegality. See Order 2 Rule 4 of the Civil Procedure Rules.

26. As regards the standard of proof, this Court in the case of *Kinyanjui Kamau vs George Kamau* [2015] eKLR expressed itself as follows;-

“...It is trite law that any allegations of fraud must be pleaded and strictly proved. See *Ndolo vs Ndolo* (2008) 1 KLR (G & F) 742 wherein the Court stated that: “...We start by saying that it was the respondent who was alleging that the will was a forgery



and the burden to prove that allegation lay squarely on him. Since the respondent was making a serious charge of forgery or fraud, the standard of proof required of him was obviously higher than that required in ordinary civil cases, namely proof upon a balance of probabilities; but the burden of proof on the respondent was certainly not one beyond a reasonable doubt as in criminal cases...”...In cases where fraud is alleged, it is not enough to simply infer fraud from the facts.”

105. I am afraid that the Plaintiff herein did not prove the plea of fraud and illegality to the requisite standard or at all. For good measure, it is the Plaintiff who had invoked the plea of fraud and illegality and thus same bore the burden in accordance with the provisions of Sections 107, 108 and 109 of the *Evidence Act* Chapter 80 Laws of Kenya. [See also the decision in the case of Daniel Toroitich Arap Moi v Mwangi Stephen Mureithi [2014]eKLR; Agnes Nyambura Munga v Lita Violet Shephard [2018]eKLR and Dr. Samson Gwer & 5 Others v KEMRI [2020]eKLR, respectively].

106. Finally, it is appropriate to address albeit in brief whether the Plaintiff is entitled to any of the reliefs that have been pleaded. Firstly, the Plaintiff has sought for a declaratory order that the parcel of land [sic] referred to as PDP No. ISL/117/98/198 belongs to the Plaintiff.

107. Nevertheless, whilst testifying before the court PW1 stated as hereunder;

“We applied for allotment in 1997. We do not have evidence to that effect. We have never been given any allotment by the county council”.

108. In the absence of a letter of allotment issued by the county council of Isiolo [now defunct] can the Plaintiff partake of a declaratory order? Certainly, the plea for a declaratory order is built on quicksand.

109. Secondly, the Plaintiff sought that the certificate of title in favour of the 1st Defendant be cancelled and revoked and lieu thereof a certificate of lease be issued to the Plaintiff.

110. However, there is no gainsaying that this court is not bestowed with the mandate to allocate any land to anyone. Furthermore, this court has no constitutional capacity to issue a lease either in the manner proclaimed by the Plaintiff or otherwise. [See Article 67[2] of the *Constitution* 2010] [See also the dicta in Cordison Investment Ltd v Chairman, National land Commission [2019]eKLR at paragraphs 30 and 31 thereof].

111. The Plaintiff has also sought for an order of permanent injunction to bar the Defendants from [sic] interfering with the Plaintiffs right to and in respect of the suit property. Notably, the persons being sought to be barred/prohibited from entering upon the suit property includes the 1st Defendant who is the registered proprietor thereof.

112. Can a court of law, grant and/or issue an order of permanent injunction to restrain and/or prohibit the registered owner from dealing with what is undeniably his/hers? The answer to this question is obviously in the negative.

113. In the case of Nguruman Limited v Jan Bonde Nielsen & 2 others [2014] KECA 606 (KLR), the Court of Appeal addressed the issue and 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.



114. In my humble view, the prayer for permanent injunction which has been sought by the Plaintiff is equally untenable. In any event, the prayer for permanent injunction under reference has been sought for by a busybody.

Final Disposition:

115. Flowing from the analysis [details highlighted in the preceding paragraphs], it must have become crystal clear that the Plaintiff's suit is not only premature and misconceived; but same is equally untenable in the eyes of the law.

116. Consequently, and in the premises, the final orders that commend themselves to the court are as hereunder;

- i. The Plaintiff's suit be and is hereby dismissed.
- ii. Costs of the suit be and are hereby awarded to the 2nd to the 5th Defendants
- iii. The Interlocutory Judgment which was [sic] entered against the 1st Defendant on the October 24, 2022 be and is hereby vacated.

117. It is so ordered.

DATED, SIGNED AND DELIVERED AT ISIOLO ON THE 20TH DAY OF MARCH 2025.

OGUTTU MBOYA,

JUDGE.

In the presence of:

Mutuma/Benson – Court Assistant.

Mr. Caleb Mwiti for the Plaintiff

Ms Mbogo h/b for Mr. Ken Muriuki for the 2nd and 4th Defendants.

Mr. Benjamin Kimathi [principal litigation counsel] for the 3rd and 5th Defendant.

N/A for the 1st Defendant

