



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Mutua v County Government of Narok; The National Land Commission
(Interested Party) (Environment & Land Case E007 of 2021)
[2023] KEELC 20967 (KLR) (26 October 2023) (Judgment)**

Neutral citation: [2023] KEELC 20967 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAROK
ENVIRONMENT & LAND CASE E007 OF 2021
CG MBOGO, J
OCTOBER 26, 2023**

BETWEEN

GODFREY MUTUA PLAINTIFF

AND

THE COUNTY GOVERNMENT OF NAROK DEFENDANT

AND

THE NATIONAL LAND COMMISSION INTERESTED PARTY

JUDGMENT

1. The plaintiff filed a plaint dated 8th April, 2021 seeking judgment to be entered against the defendant for: -
 1. A declaration that all the deliberations, resolutions, development plans and goals regarding future developments on the suit property and the intended demolition of the applicant's building and eviction from the subject property is in violation of the plaintiff's rights and freedoms, unconstitutional and null and void.
 2. A declaration that the subject property being plot no. 212 Block 5 formally plot No. 211 Block 5 located within Narok town is distinct and does not constitute part of the Narok County Referral Hospital land.
 3. An order directing the respondent's leader and Governor H. E Samuel Tunai to bear personal responsibility for any damage and loss caused out of any demolition on the subject property being plot no. 212 Block 5 formally plot No. 211 Block 5 located within Narok town.
 4. A permanent injunction do issue restraining the defendant whether by its agents, employees, servants or any other person working under the defendants' instructions and authority from



in any way evicting, interfering with the applicant's quiet possession, entering, trespassing, occupying, demolishing structures or in any other way at all dealing with the plaintiff/applicant's property plot no. 212 block 5 in Narok town.

5. Exemplary and general damages.
6. The costs of this suit and interest at court rates.
2. The plaintiff stated that sometime in the year 2007, he purchased the property known as Plot No. 211 Block 5 now plot no. 212 Block 5 from Patricia Sangriaki through a written sale agreement and that on 15th July, 2010 the initial proprietor of the suit property paid the outstanding rates arrears and he subsequently applied for the new letter of allotment. The plaintiff stated that he has been paying his rates consistently and hence there are no pending arrears. Further, that the suit property is distinct and does not constitute part of the Narok County Referral land.
3. The plaintiff further stated that pursuant to a letter of no objection issued by the defendant's Chief Officer of Planning on January, 2018, there is no doubt that the defendant has not raised any challenge in his bid to process the lease certificate. Further, that he engaged the defendant and other authorities for approval to construct a residential building in the suit property and he received approval from the National Environment Management Authority and the Director of Physical Planning-Narok. However, the plaintiff avers that in the course of construction, the District Public Health Officer vide a letter dated 13th September, 2007 purported that the construction was unauthorized and, in a letter, dated 17th October, 2008 he alleged that the construction was likely to interfere with the hospital's drainage.
4. The plaintiff further stated that the construction has continued consistently and that on 31st March, 2021, the County Governor issued an ultimatum to owners of businesses built on the hospital land to vacate or in the alternative his government would send bulldozers to demolish the structures and, from the threats, the plaintiff has since been subjected to anxiety, fear and uncertainty. Further, that the defendant has acted unreasonably, and are actively intimidating him into vacating his property without the due process of the law.
5. The plaintiff stated that the defendant has never notified him of any intention of compulsory acquisition of the suit property and to the best of his knowledge, the interested party has never published the requisite gazette notice announcing its intention to acquire the suit property.
6. On 29th May, 2023, the defendant filed its statement of defence dated 24th May, 2023. While denying the contents of the plaint, the defendant stated that it was not aware of the allegations in paragraph 10 of the plaint and the allegations of interference as particularized in paragraph 11-15. The defendant stated that the gazette notice cited made no reference to the plot in issue and averred that it has lost use of their property resulting from the plaintiff's unlawful acts.
7. The defendant sought a permanent injunction restraining the plaintiff from dealing or interfering with the defendant's use and occupation of the hospital land.
8. The plaintiff's case proceeded for hearing on 8th June, 2023. While adopting his witness statement dated 8th April, 2021 as his evidence in chief, the plaintiff testified that in the year 2007, his neighbour known as Patricia approached him as he was interested in purchasing a parcel of land. That the said land was within the boundary of the hospital and it was clearly marked. That they proceeded to the then Town Council offices for verification purposes and after verification, he learnt that it was plot No. 211 block 5 which was by then known as stadium.



9. The plaintiff further testified that they proceeded to their 10th August, 2007 and he paid the transfer fees and he was armed with the vendor's-Patricia's letter of allotment. He testified that he managed to have the plot transferred to himself in the year 2010. In support thereof, the plaintiff produced P. Exhibit Nos 1 to 17, a supplementary list of documents filed on 2nd May, 2023 containing 6 documents as P. Exhibit No. 18 to 23 respectively.
10. On cross examination, the plaintiff testified that he claims the suit property as a purchaser for value and his claim is based on the sale agreement and the property purchased is known as plot 211 block 5 stadium and he had the plot transferred to his name in the year 2010. The plaintiff further testified that after having the suit property transferred to him, he had other reasons to have Patricia's names (vendor) in his documents. Further, that he received a letter of no objection which referred the property as plot 212 block 5. Thereafter, he applied for NEMA licence on 2nd October, 2012 and as per the letter, he was not advised that his application was not successful. He admitted that he obtained approval from NEMA in the year 2016 which cited plot number 211. Further, he testified that the valuation report is for plot number 212 which is the same plot that he purchased from the vendor-Patricia. Further, that the plot was hilly and he commenced excavation in the year 2007 during which time, the National Environment Management Authority did not exist in Narok Town. He denied that he did not start the process of preparing the ground before it was allocated.
11. Further cross examination proceeded on 12th June, 2023, the plaintiff testified that the hospital was on the upper side when he purchased the suit property and the hospital lagoons were on the lower side. He testified that the sewer trunk line does not precede his claim and that they were not installed while he was in possession of the suit property. Further, that the Public Officer for the defendant made a comment that the property should not be developed to point "JJ" in the development plan for purposes of safeguarding the sewer trunk line. The plaintiff admitted that he uses the property as a warehouse and testified that he cannot move his items out of the warehouse if he was required to renovate the said warehouse. It was his testimony that he was very young when the approved development plan of Narok was done and has not asked the court to nullify the approved plan for 1985. He admitted that he did not attend the meeting indicated in the minutes produced as P. Exhibit No. 18 which minutes do not show that the allotment that was transferred to him and, the word "transfer" is in his own handwriting on the photocopy upon the request of the defendant. He also admitted that the original copy of the allotment letter does not bear the same handwriting. The plaintiff urged the court to rely on P. Exhibit No. 4 and 18 on the issue of transfer.
12. The plaintiff further testified that he did not make an application for change of number of the plot and sought to rely on P. Exhibit No. 3 which is an application for a new letter of allotment showing the new plot number is 212 from the old number 211 and the new letter of allotment is not numbered.
13. It was his testimony that the document in question was filed by Mr Atandi, a clerical officer of the defendant, who told him that he would take it for signature of the Town Clerk. Further, that it does not mean that the recording of the documents by Mr Atandi was not approved by the Town Clerk as it can be seen from P. Exhibit No. 2, the vendor-Patricia Sangriaki was requested to clear the rates before the transfer could be effected in his favour.
14. On re-examination, the plaintiff testified that he purchased the property in the year 2007 from Patricia Sangriaki and that the clerk of the defendant told them to indicate in the transfer document the name of the person in whose favour it was to be effected. While referring to P. Exhibit No. 4 dated 30th July, 2010, the plaintiff testified that it is signed and stamped by the Town Council of Narok and it indicates the plot as 212 block 5. Further, that the new number came as a result of digitization. That 211 block 5 is the old number which he was subjected to on an application for the new letter of allotment. He



- further testified that he made payment for the new letter of allotment in the year 2010 during which time the property had not been transferred to him. Also, that he has not blocked the hospital's sewer line and that there has never been an issue of drainage for the years he has been in possession of the suit property as there is an existing drainage that can be accessed by the hospital.
15. The defendant's case proceeded for hearing on 12th July, 2023. Osewe Vincent a Senior Assistant Director in charge of Physical Planning Narok, (DW1) while adopting his witness statement dated 22nd May, 2023 as his evidence in chief testified that he is familiar with the area in dispute. He testified that the particular space is planned and reserved for public purpose i.e. existing county council housing for people who work at the Narok County Referral Hospital. Further, that the designation of the area as a public purpose was done through an approved land plan of 1985 which plan was prepared under the previous Physical Planning Act and underwent all the procedures leading to its approval by the relevant authorities. DW1 produced a list of documents dated 24th May, 2023 as D. Exhibits No. 1,2 and 3 respectively.
 16. On cross examination, DW1 testified that he did not produce the plan extract since the document is big and it could require printing in Nairobi. Also, that he did not have a stamp from the Minister in the plan extract. That apart from the Minister, the Director of Planning, the authors of the plan are the three main officers that appended their signatures to the plan. It was his testimony that the Director of Surveyor has no role in the land use plan. Further, that the 1985 plan was under the former Physical Planning Act, 286 (repealed) and Town and County Planning Act (repealed) which both Acts have been repealed. He testified that once a plan has been approved the name and signature of the officers and reference is indicated in the plan and he did not get to know if the extract was part of the approved plan by the Minister. With regard to P. Exhibit No. 23, the approved Narok Town Zoning plan, DW1 testified that the said document has gone through the entire planning process which was done by the then Minister and it is certified by the National Director of Physical Planning and approved by the Cabinet Secretary in charge of Land, Housing and Urban Development.
 17. DW1 further testified that as far as the plan is concerned, the Narok District Hospital is indicated in the plan and, the plots marked in red indicates that they are commercial plots. While being referred to the letter dated 7th October, 2008 (P. Exhibit No. 15), DW1 testified that the letter was from the Public Health Office addressed to the plaintiff with reference to the building construction. Further, that the author of the letter was apprehensive that it would affect the hospital. Further, that whereas the letter was recognizing the plaintiff's plot is adjacent to the hospital, the letter dated 13th September, 2007 (P. Exhibit no. 16) was also addressing the construction aspect approval of the plan. It was his testimony that the health department were right to enquire about the construction.
 18. With regard to P. Exhibit No. 22, DW1 testified that it bears the stamp of the District Water Engineer Narok, NEMA, and other signatures which are not legible. Further, that the writings show the Town Clerk, Town Council of Narok, the District Public Health Officer but he could not trace their signatures and had to verify the document himself. It was his evidence that the final approval lies with the Physical Planning Department.
 19. With regard to P. Exhibit No. 20, DW1 testified that it was the first time he was seeing the document. He testified that the letter is signed by the Chief Officer Physical Planning and Urban Development addressed to the Chairman, National Land Commission through the Secretary, Land Management Board, Narok County. Further, that the reference is a letter of no objection showing that the plaintiff is the registered owner of the plot number 212 Block 5. Further, that P. Exhibit No. 19 was an advertisement made by the County Government in 2021 notifying the public of a verification and validation exercise of plots and public utilities in Narok town. He testified that this notice came after the survey of the town for purposes of regularization and issuance of title documents to private persons



which process was completed. Further, that the county hospital has a title to its property and some owners whose ownership was disputed were left out. Whereas he did not present any title for the hospital, he informed the court that the hospital is running but it has had issues and one of them is the trunk sewer line that connects to the lagoon across the road.

20. DW1 testified that the hospital complains of obstruction due to the adjacent plots, development and limitation as well as regarding future developments, and that there are letters to that effect which he did not produce in court. It was his position that the former Chief Land Officer has complained although he is not a witness in this case. He agreed that it is not possible to pay rates if one does not have a property. It was also his position that payment of rates is not acknowledgement of absolute ownership of property. DW1 identified P. Exhibit No. 5 (a) to (d)- as receipts from County Government of Narok and P. Exhibit No. 3 which is the application for new letter of allotment. As far as the reference number is concerned, it is different from the plan which is R.163/2016/01 P. Also, that exhibit No. 17(a), is a notice of completion placed in the Daily Nation of 24th September, 2021 which is a completion of a part development plan in respect to a Medical Training Centre, a District Hospital and Hospital Lagoons.
21. On re-examination, DW1 testified that paragraph 3 of his statement has the citation which is R163/81/4 of 30th April, 1985. It was his evidence that once a plan is approved, the land concerned is not available for alienation other than the one it was approved for and, giving it to a private user, is tantamount to encroachment. Further, that whatever was approved by a repealed Act still stands. He also said that the nature of the complaint in the letter dated 13th September, 2007, (P. Exhibit no. 3) was in regard to the construction going on in the plot during which time there was no approved plan (as at the time of complaint by the hospital). Further, that validation had not been concluded at the time of filing the suit. He also said that the titles were issued in the year 2022 in the approved PDP of 2012 (P. Exhibit No. 17(a) showing that there was a hospital which is in conformity with the approved plan of 1985. He went on to say that the lagoons were part of the 1985 approved plans as well as the Nursing College.
22. DW1 further testified that in the approved plan of 2016, the hospital and the lagoons are coded yellow and blue respectively with the blue shading is for public utility. He added that once a plan is approved, it is numbered and that stamping of a document does not mean that it has been approved.
23. On 11th August, 2023, the plaintiff filed written submissions dated 7th August, 2023. The plaintiff raised six issues for determination as below: -
 - a. Whether the plaintiff is the owner of the subject property plot no. 212 block 5 formerly plot No. 211 Block 5.
 - b. Whether the property no. block 5 formerly plot no. 211 block 5 constitute part of the Narok County Referral Hospital land.
 - c. Whether the construction structure sits on the hospital sewer trunk line that connects the hospital lagoon.
 - d. Whether the plaintiff sought for approval for construction of existing structure from the necessary authorities.
 - e. Whether the defendant is justified in his attempts to evict the plaintiff from the subject property.
 - f. Who should bear the cost of the suit.



24. On the first issue, the plaintiff while relying on the case of Rukaya Ali Mohamed versus David Gikonyo Nambachia & Another Kisumu HCCA. 9 of 2004, submitted that once an allotment letter is issued and the allottee meets the condition therein, the land in question is no longer available for allotment since a letter of allotment confers absolute right of ownership of proprietorship unless it is challenged by the allotting authority. Further, that from the documents provided and the testimonies of the witnesses, it was uncontroverted fact that the change of numbers was a necessary process due to the transition from the manual register to the digital records and in this case, due process had been followed and no objection or revocation had been done by the court. The plaintiff submitted that he is the legal owner of the suit property. The plaintiff relied on the case of Festo Ogeda Agutu versus Richard Odumbe & Another [2022] eKLR.
25. On the second issue, the plaintiff submitted that he confirmed that the suit property does not constitute part of the Narok County Referral Hospital as was evidenced from the documents produced. Also, that Exhibit 19 was a public notice by the county government calling for verification and validation exercise of plots in Narok town and he confirmed that he was among the plot owners in block 5 who turned for the said meeting and this shows that he is the owner of the suit property. Further, that the allegations that his plot forms part of the land owned by the hospital is unfounded as no evidence was produced. Also, that the only document produced by the defendant was a plan extract whose authenticity was not verified majorly because the extract was incomplete and the original copy was not availed in court. Further, that in the Narok Town Zone Plan no. 12 of 2016, there was a clear demarcation of the hospital land and the plots neighbouring the facility.
26. On the third issue, the plaintiff submitted that he provided proof that his structure does not in any way sit on the hospital sewer trunk line that connects the hospital lagoons and that the letters dated 13th September, 2007 and 17th October, 2008 did not raise these issues. That the letters were written to the plaintiff informing him to exercise caution in the excavation activities which was going on next to the hospital so as not to damage the existing drainage systems.
27. On the fourth issue, the plaintiff submitted that he satisfied all the necessary requirements for the building construction including obtaining approvals from the relevant authorities as required by the laws governing the same. It was also submitted that all these authorities cannot issue an individual with approvals to commence or continue development if the site is on a public property or in the absence of proof of ownership.
28. On the fifth issue, the plaintiff submitted that the defendant's attempt to evict the plaintiff from the suit property is not justified as he has given enough evidence which points to him being the legal owner of the suit property. The plaintiff submitted that an attempt to evict him from the land is unlawful and it would amount to violation of his rights under Article 40 of *the Constitution*.
29. The defendant filed its written submissions dated 4th August, 2023 where it raised five issues for determination as listed below: -
 1. Whether the plaintiff has proved ownership to the required threshold.
 2. Whether the plot in dispute is plot no. 212 block 5 formerly 211 block 5 or 07 and 412 as per the 1985 approved PDP.
 3. Whether the plaintiff's construction sits on the sewer trunk lines.
 4. Whether the plaintiff should be evicted from the suit property.
 5. Who bears the costs of this suit?



30. On the first issue, the defendant submitted that instead of the plaintiff producing a Plan Development Plan (PDP), he produced a Zoning Plan that was developed ten years after issuance of a letter of allotment which would have gone a long way in assisting the court to ascertain the placement of the suit property on the ground and, prior to the issuance of the allotment letter in the year 2006, the plaintiff could not assert proprietary interest in the suit property either as a primary allottee or a purchaser for value. The defendant relied on the case of Nelson Kazungu Chai & 9 Others versus Pwani University College [2014] eKLR.
31. The plaintiff further submitted that the essence of the Zoning Plan produced by the plaintiff was only limited to providing a spatial framework for regulation and control in the use of land to ensure compatibility in the different uses and, in no way, could the zoning plan be relied upon as basis of proof of any allocation or formalization of previous allocation of land. While relying on the case of African Line Transport Company Limited versus The Hon. AG, Mombasa HCCC No. 276 of 2013, the defendant submitted that all the changes in numbers were possible since the land was open space allocated for public use and therefore did not have PDP with plots, which would have been the case if the land had been allocated as plots to the general public instead of the 1985 PDP. Further, that plans cannot be applied in reverse to prior allocations.
32. The defendant further submitted that an allotment letter is merely an intention by the Government to allocate land and, therefore, does not constitute a title by itself. Reliance was placed in the cases of Stephen Mburu & 4 Others v Comat Merchants Limited & Another [2012] eKLR, Joseph Arap Ngo'k v Justice Moijo Ole Keiwua & others [1997] eKLR and Ali Mohamed Dagane (Granted power of Attorney by Abdullahi Muhumed Dagane, Suing on behalf of the estate of Mohamed Haji Dagane) versus Hakar Abshir & 3 Others [2021] eKLR.
33. The defendant submitted that the plaintiff has not proved ownership to the required standard as he has failed to produce evidence of approval of the Part Development Plan by the Commissioner of Lands that has numbered available plots, has also not complied with terms of allotment and has not provided the cadastral survey.
34. On the second issue, the defendant submitted that having produced the extract of a public document that shows the identity of the disputed land as shown in the approved PDP of 1985, there is no evidence from the plaintiff placing the alleged numbers on any registered PDP except a Zoning Plan showing the nature of land use by approved allottees.
35. On the third issue, the defendant submitted that the plaintiff had never received approval for construction of the existing structure and he was in contravention of the *Physical and Land Use Planning Act*, 2019 and that the letter dated 2nd October, 2012 was not an approval as alleged but an acknowledgement receipt of the Environment Impact Assessment Project Reports for the proposed residential developments which copies were to be forwarded to the relevant agencies for comments within the period stipulated. The defendant further submitted that the letters dated 13th September, 2007 and 17th October, 2008 informed the plaintiff that the construction had disturbed the hospital boundary fence and that the heaped materials on the site threatened to damage the existing drainage system.
36. On the fourth issue, the defendant submitted that according to the approved plan citation No. R163/81/4 dated 30th April, 1985, the suit property had been allocated to the Referral Hospital and the Town Council for housing and it remains government land reserved for public use. The defendant relied on the cases of High Court Civil Appeal No. 288 of 2010, Kipsirgoi Investments Limited v Kenya Anti-Corruption Commission and James Joram Nyaga & Another v Hon AG [2007] eKLR.



37. On the last issue, the defendant submitted that the issue of costs in this suit ought to be met by the plaintiff in the event that the suit is dismissed.
38. I have carefully analysed and considered the pleadings, the evidence tendered and the written submissions filed by both parties and in my view, the issues for determination are as follows: -
1. Whether the plaintiff is the owner of plot no. 212 block 5 formerly plot no. 211 block 5.
 2. Whether the plaintiff should be evicted from the suit property/whether the defendant is justified in its attempt to evict the plaintiff.
 3. Who is entitled to costs.
39. On the first issue, it was the plaintiff's case that vide a sale agreement dated 10th August, 2007 and after paying the plot transfer fees, he was issued with the allotment letter for the suit property. It was his evidence that he has been paying the rates and, went ahead to obtain the approvals from relevant authorities to construct a residential building on the land. That with the evidence produced, he is the legal and beneficial owner of plot no. 212 block 5 formerly plot no. 211 block 5.
40. The process of allocation of government land was restated in the case of *Nelson Kazungu Chai & 9 Others v Pwani University College* [2014] eKLR. where the court held as follows:
- “130. 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.
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 survey was confirmed by the Surveyor, PW3. The process was also reinstated in the case of *African Line Transport Company Limited vs. The Hon. Attorney General, Mombasa HCCC No. 276 of 2013*.
- “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.”
41. 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, my brother, Cheron J, made the following observations which I am persuaded to adopt as follows:-
- “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 under this Act, 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 gazettelement 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 allottee. 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 Moiyo 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 allottee 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 allottee 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.”

42. In applying the principles enunciated above to this case, this court is tasked with the duty to check whether in establishing the ownership of the suit property, the plaintiff followed the procedure to confer legal ownership of the suit property. P. exhibit 3 is an application for a new letter of allotment with the name of the plaintiff as per the valuation roll and these details appear to have been entered by one Atandi on 15th July, 2010. P. exhibit 4 is a document referenced as allocation of a plot to the plaintiff dated 30th July, 2010 which is in compliance with Town Planning Committee Minutes No. FC/113/2010 and SUB/COM/109/2010. In this letter dated 30th July, 2010, there was a term to effect that if the plaintiff was unwilling or unable to develop the plot within 24 months, the suit property will be automatically forfeited to the council for re-allocation. Also, the plaintiff was required to within 30 days pay Kshs. 15,000/- to the council to signify acceptance. A careful look at P. exhibits 1 shows receipt dated 26th October, 2007 which is plot transfer fees from Patricia Sangriaki of plot no. 211 block 5. How was it possible that the receipt predated the offer letter dated 30th July, 2010? I also note that the plaintiff did not provide minutes of the meeting as captured in the letter.
43. The plaintiff further availed evidence of payment of rates and approvals from relevant agencies. According to P. Exhibit 11, the plaintiff was issued with an Environment Impact Assessment License dated 10th February, 2016 for implementation of the project subject to the attached conditions. In his supplementary list of documents, the plaintiff produced a letter of no objection from the Department of Land, Housing, Physical Planning and Urban Development dated 16th January, 2018 indicating that the defendant has no objection with the plaintiff obtaining a title to the suit property.
44. The defendant on the other hand disputed ownership of the suit property by the plaintiff. It was the defendant’s case that the plaintiff is not the legal owner of the suit as failure by the original allottee to meet the conditions set out in the letter of allotment extinguished her rights and she could not be said to have passed a good title to the plaintiff. The Defendant further contends that the District Public Health Officer is not a custodian of the 1st defendant’s records of land and would not have had the right to address the plaintiff on issues pertaining to land reserved for use of the existing Narok County Referral Hospital and County Council Housing.
45. The defendant maintained that the land as set aside was approved in the Narok Development Plan No. 25 Ref. No. R163/81/4 was not available for alienation and that it is still desirable to maintain the two sites as being public utility land for future expansion of the existing hospital into a modern Training and Referral Hospital.



46. In my view, it was not possible for the plaintiff to have paid for the transfer fees in the year 2007 whereas the letter of allocation of a plot was issued on 30th July, 2010. As far as the letter dated 30th July, 2010 is concerned and in the absence of proof of payment made within the 30 days stipulated therein, the plaintiff extinguished his right of ownership of the suit property.
47. Assuming that the plaintiff complied with the letter of allocation of plot dated 30th July, 2010, the plaintiff needed to show that the suit property was available for allocation in the first place. On this, it would have been proper for him to call the relevant officer responsible for allocation of government land for private use or even provide evidence of minutes of the defendant indicating the area had been identified for disposal. Secondly, the plaintiff has not provided the Part Development Plan showing that the suit property has been identified for disposal for use by private individuals/entities. In any case, the defendant provided an extract of the Part Development Plan-approved plan of 1985. The plaintiff has not provided evidence to counter this fact but instead provided the Narok Zoning Plan certified on 31st October, 2018. An analysis of the Notice of Completion of Development Plan: Narok Local Physical Development Plan Ref: R163/2015/01-P. Exhibit 17 (b) informed members of the public that the development plan relates to land situated within Narok Township and was available for inspection at the County Planning Officer's office. However, neither the plaintiff nor the defendant presented before this court, the development plan whose notice dated 15th February, 2015 was completed. If at all there is a recent/new Part Development Plan, the same has not been made available for the court to make an observation.
48. The third step is a preserve of the relevant office of the defendant and does not apply to the issue before this court. The fourth step as pronounced in the authority cited above would be for gazzement of the plots to be sold. The plaintiff has not supplied evidence to prove that the suit property was available for sale. The fifth step would be for the sale of the plots by public auction. Again, no evidence has been supplied to confirm this.
49. The sixth step would be for the issuance of an allotment letter to the allottee. 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.
50. From the above, the plaintiff before purchasing the suit property from the seller, Patricia, needed to have satisfied himself that the seller had obtained all the documents listed above i.e. notice to show that the property was available for alienation for private use from the defendant, the Part Development Plan attached to the allotment letter and proof of payment made within 30 days. In my view, the plaintiff has not met the above requirements.
51. On the second issue, I am of the view that having found that the plaintiff is not the owner of the suit property and in the absence of a Part Development Plan that counters the 1985 plan, the plaintiff has no business dealing with the suit property whatsoever.
52. The plaintiff has failed to satisfy to this court that on a balance of probabilities, that he is the owner of plot no. 212 block 5 formerly plot no. 211 block 5 and, therefore, the orders sought in the plaint dated 8th April, 2021 cannot issue. Instead, an order of permanent injunction is hereby issued against the plaintiff either by himself, agents, servants or those who may claim under him from entering, remaining on, or in any way dealing or interfering with the defendant's use and occupation of the hospital land. The plaint dated 8th April, 2021 is dismissed. Each party to bear his/its own costs. It is so ordered.

DATED, SIGNED & DELIVERED VIA EMAIL ON THIS 26TH DAY OF OCTOBER, 2023.

HON. MBOGO C.G.



JUDGE

26/10/2023.

In the presence of:

CA:Meyoki

