



Oloo (Suing as the admin of the Estate of John Bruno Oloo) v Registered Trustees Trinity Fellowship & another (Environment & Land Case 325 of 2017) [2023] KEELC 22140 (KLR) (7 December 2023) (Judgment)

Neutral citation: [2023] KEELC 22140 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ENVIRONMENT & LAND CASE 325 OF 2017**

**E ASATI, J
DECEMBER 7, 2023**

BETWEEN

IAN DAVID OLOO (SUING AS THE ADMIN OF THE ESTATE OF JOHN BRUNO OLOO) PLAINTIFF

AND

THE REGISTERED TRUSTEES TRINITY FELLOWSHIP 1ST DEFENDANT

THE NATIONAL LAND COMMISSION 2ND DEFENDANT

JUDGMENT

1. This suit was commenced vide the plaint dated 28th March 2002 and first filed in the High Court at Kisumu as Kisumu HCCC NO. 342 of 2002. The suit was later transferred to the Environment and Land Court for hearing and disposal and registered as Kisumu ELC No. 325 of 2017. The plaint was later amended and replaced with the further amended plaint dated 27th October 2021 and filed in court on 4th November 2021. The original plaintiff, John Bruno Oloo, passed on in the pendency of the suit and was substituted with his son and administrator to his estate, the current plaintiff herein.
2. The prayers sought in the further amended plaint against the defendants are for: -
 - a. recovery of possession of the suit land or compensation for its value by way of damages.
 - b. general damages for loss of user between 1/2/1990 until the surrender of possession and for trespass.
 - c. the cancellation of the lease issued to the defendant in respect of the suit land and rectification of the register by the removal therefrom of the name of the defendant and the restoration of the status quo ante.
 - d. Costs of this suit with interest at court rates.



- e. Further or other relief deemed just.
3. In response to the plaint the defendant had filed a written statement of defence dated 16th September 2003 which was subsequently amended and replaced with the amended written statement of defence dated 18th April, 2019 and filed in court on 23rd April, 2019. The defendant denied the plaintiff's claim and put the plaintiff to strict proof thereof.

The Evidence

4. The Plaintiff's evidence comprised the testimony of the plaintiff and the documents he produced as exhibits. The plaintiff Ian David Oloo testified that he is the son and Administrator of the estate of John Bruno Oloo the original plaintiff (herein the deceased) who died in the year 2015. He adopted the contents of his two witness statements filed on 28th January 2020 and 27th October 2021 as his evidence in chief. He had stated in the witness statement filed on 28th January 2020 that on or about 1969 the deceased purchased from the licensee of the Council two structures erected on the suit land. That the deceased approached the County Council of Kisumu (the Council) to allot the land to him under the Trust Lands Act. That the deceased also went into occupation of the said parcel of land and leased the same to the 1st Defendant who started paying rent at a monthly rental of Kshs.750/=.
5. The Plaintiff stated further that on 5th October 1987, the Council passed a resolution vide minutes No.54/87 to sell the land to the deceased whose terms and conditions were accepted by the deceased. That in 1989, the deceased learnt that the 1st Defendant had made representations to the Commissioner of Lands to allot the suit land to the 1st Defendant. That the 1st Defendant fraudulently represented to the Commissioner of Lands that they had been in possession of the suit land for 20 years and deliberately failed to disclose the interest of the deceased in the suit land. That the 1st defendant's registration of the suit land is fraudulent and in the circumstances the Defendant should hold the land in trust for the deceased.
6. That the defendant misled the Commissioner of Lands that the plot was in vacant possession and about the nature of occupancy of the suit land. That the 1st Defendant misled the deceased that it was in the process of purchasing the land when all along it had been scheming behind the deceased's back to have the suit land allocated to it. That the 1st Defendant failed to make a full disclosure of all material facts to the Commissioner of Land.
7. That acting on the said misrepresentations and in breach of *the Constitution* and *Trust Lands Act*, the Commissioner of Land irregularly allotted the suit land to the 1st Defendant and issued a lease to the 1st Defendant that runs from 1st February 1990 for 99 years, thereby purporting to extinguish the deceased's interest in the suit land. That the 1st defendant has since used the land to the exclusion of the deceased and his estate and that the estate of the deceased has suffered loss and damage. That the plaintiff now seeks for recovery of the land and rectification of the register to replace the defendant with the deceased or retain the status quo ante 1st December 1990.
8. Vide the further witness statement dated 27th October 2021, the Plaintiff added that the suit land is land parcel known as L.R No. 9341/234 No. 4684. That no application was made to the Council for allotment and that the Council did not allot the suit land to the 1st Defendant. That the 1st Defendant misled the Commissioner of Lands and the successor, the 2nd Defendant that the land had been allotted to it by the Council. That the 1st Defendant used political influence and patronage to coerce and influence the 2nd Defendant's predecessor to illegally allocate to it the suit land contrary to the law. That the 1st Defendant failed to comply with the terms of the offer of allotment as to acceptance of offer and payment of the prescribed fees and so the offer of allotment lapsed. That no title could flow from the



allotment since the land was not even surveyed as no survey fee was paid. That the issuance of the letter of allotment and the subsequent title to the 1st Defendant was illegal.

9. In his testimony in court, the Plaintiff added that the suit land initially belonged to Panesar Building Company Ltd. and his father bought it. That the County Council of Kisumu held the land in trust because the land fell within its jurisdiction. He produced exhibits inclusive of part-development plan, letter dated 30th April, 1969, Minutes of the County Council of Kisumu, documents showing existence of tenancy between the deceased and the 1st Defendant, document relating to Rent Tribunal Case No. 113 of 1991, documents related to request by 1st defendant to purchase the suit land from the deceased, letter dated 6th December 1989, documents relating to transfer of the suit land in favour of the 1st Defendant, and letters by the deceased complaining about the transfer.
10. On cross-examination, the Plaintiff stated that what his father bought were the 2 houses occupied by Panesar Builders and not the land. That he had no evidence of payment of annual rent. That there is no prove of payment of consideration for the land. That at some point Trinity Fellowship expressed interest to buy the land from his father but the sale did not go through because the plot was not surveyed and the seller did not have title. That the deceased owned the land although title had not been issued.
11. In re-examination the plaintiff stated that as at the time the part Development plan was made, the 1st Defendant already had a dispute with the deceased. That the deceased had a right to apply for title but was waiting for the land to be surveyed.
12. The evidence adduced on behalf of the defence comprised of the testimonies of DW1 and DW2 and the documents produced as exhibits. DW1 adopted his witness statement dated 29th December 2020 as his evidence in chief. He had stated in the said witness statement that sometimes in the early 1990s Rev. Robert Nyageth Odeyo and him were sent to the Kisumu County Council to make an application for a plot in Maseno township on behalf of Trinity Fellowship. That they were shown vacant plots in Maseno Township and they settled on the parcel of land that Trinity Fellowship is currently occupying. That they applied for allotment letter and were granted the same. That they engaged a government surveyor who surveyed the land and they thereafter fenced it off and were given certificate of title to the land. That they have been paying all land rates and rents to date.
13. DW1 produced the documents contained in the list of documents as exhibits. They were; Copy of letter dated 02.11.1967 by the Commissioner of Lands, Copy of Letter of Allotment dated 28.11.1990, Copy of Grant No. I.R.N 4784 Land Reference Number 9341/234 as well as annexed Deed Plan Number 158014 dated 16.10.1991, Copy of land rates arrears for 1990-1995 receipt from Kisumu County Council dated 13.04.1995, Copies of land rates receipts from Kisumu County Council for 1996 dated 09.05.1996, Copy of land rates receipt from Kisumu County Council for 1997 dated 16.01.1997, Copy of land rates receipt from Kisumu County Council for 1998-1999 dated 28.01.1999, Copy of land rates receipt from Kisumu County Council dated 20.01.2000, Copy of poll rate from Kisumu County Council dated 18.01.2001, Copy of land rates receipt from Kisumu County Council dated 18.01.2001, Copy of land rates receipt from Kisumu County Council dated 29.01.2002, Copy of land rates receipt from Kisumu County Council dated 13.02.2003, Copy of land rates receipt from Kisumu County Council dated 04.02.2004. Copy of land rates receipt from Kisumu County Council dated 21.01.2005, Copy of land rates receipt from Kisumu County Council dated 19.01.2006, Copy of land rates receipt from Kisumu County Council dated 17.01.2007, Copy of land rates receipt from Kisumu County Council dated 25.01.2008, Copy of land rates receipt from Kisumu County Council dated 20.01.2009, Copy of land rates demand note/invoice from Kisumu County Council dated 05.02.2010, Copy of land rates demand notice from Kisumu County Council dated 02.02.2012,



Copy of land rates payment request and bill from Kisumu County Council both dated 14.01.2014. Copy of land rates bill from Kisumu County Council dated 14.01.2015, Copy of land rates bill from Kisumu County Council dated 21.01.2016, Copy of land rates receipt from Kisumu County Council dated 23.01.2017, Copy of land rates receipt from Kisumu County Council dated 17.01.2018, Copy of land rates receipt from Kisumu County Council dated 24.01.2019 and Copy of Land rates receipt from Kisumu County Council dated 17.01.2020

14. On cross –examination he stated that Trinity Fellowship is an Organization that trains students in biblical matters. That he became a Trustee of the Organization in the late 80’s. That the organization held its meetings in premises belonging to Panesar but he did not know the arrangements that the organization had with Panesar over the premises. He stated that there was a time the deceased wanted to sell the premises. That they used to pay rent to John Bruno Oloo, the deceased. That in the allotment letter they were asked to pay Kshs.630/= That the condition was that if they did not accept the offer and pay, the offer could lapse. That he did not have evidence of payment or acceptance.
15. DW2 adopted the contents of his witness statement dated 29th December 2020 as his evidence in chief. He had stated in the witness statement that they had their Trinity Fellowship Headquarter in Maseno. That they occupied two wooden structures which were left behind by a road construction company called Panesar along Kisumu –Busia Road next to Maseno Law Courts. That they submitted their application to the County Council of Kisumu and were allocated a piece of land and got a surveyor to place beacons on the land. That later he learnt that the owner of the wooden structures they had been renting was claiming to be the land owner of the land that they had been allotted.
16. On cross-examination he stated that their landlord was the deceased. That when they applied for land and were asked by the County Council to identify the land they want, they identified the land that they were already occupying and that they did not inform the deceased that they had identified the land.
17. Although on 1st November 2022 time was given to the 2nd defendant to prepare for the hearing at the request of its Counsel, there was no appearance for the 2nd defendant on 17th October 2023 when the matter proceeded to hearing. Since the hearing date had been taken by all parties in the presence of counsel for the 2nd defendant, the matter proceeded to hearing in the absence of the 2nd defendant.

Submissions

18. It was submitted on behalf of the plaintiff vide the written submissions dated 20th June 2023 that it was not disputed that the relationship between the deceased and the 1st defendant was that of Landlord and Tenant. That the [Rent Restriction Act](#) Cap 296 bars the termination of such tenancy except in compliance with the very strict conditions set forth in the Act and with the permission of the Tribunal. That there is no proof that the tenancy has been brought to an end as provided by law. Counsel relied on the provisions of Section 121 of the Evidence Act Cap 80 for this submission.
19. Counsel submitted further that the suit land was allotted by the Council to the deceased and that the deceased had minutes to demonstrate the approval of its application for the plot.
20. That the land in question is public land and the procedure of acquisition thereof ought to have been followed. That article 40 (6) of [the Constitution](#) stipulates that the right to property does not extend to property that has been acquired unlawfully. That under section 26 of the [Land Registration Act, 2012](#) a certificate of title is only prima facie evidence that a person named therein is the proprietor of the land or the lease comprised therein when there is no evidence that the title was acquired fraudulently, unprocedurally or through a corrupt practice. Counsel relied on the case of [Juma Musa Hussein -vs- Registrar of Government Lands & 2 others](#) (2019) eKLR where it was held inter alia that the holder of



title to what was hitherto public land is obligated in the circumstances to demonstrate that the title he is waving was acquired regularly and lawfully.

21. Counsel submitted further that the 1st defendant has no lawful title over the suit property because there is no evidence of compliance with the provisions of Section 53 of the [Trust Lands Act](#) Cap 288 by the Commissioner of Lands. That there is no evidence that the Commissioner of Lands acted in consultation with the Council. There are no minutes approving an application by the 1st defendant for land from the Council. Relying on the case of [Rinya Hospital Limited Vs Awendo Town Council and 21 others](#) (2017) eKLR Counsel submitted that the Commissioner of Lands acts as an agent of the County Council and he cannot allocate such land under section 53 of the [Trust Lands Act](#) without the permission and direction of the County Council.
22. Counsel submitted further that even after the allotment letter was issued the condition of allotment were not complied with. That the effect of the 1st defendant's failure to provide proof of acceptance and payment within the prescribed period is that the offer lapsed. That it was not a case of where the acceptance and payment were made late, there was none at all hence there was nothing to be processed into a lease. Relying on the case of [Wreck Motors Enterprise Vs the Commissioner of Lands & 3 others](#) (1997) eKLR. That a letter of allotment does not give rise to a proprietary interest in the land to the allottee.
23. Relying on the case of James [Joram Nyag & Another -vs- Attorney General & Another](#) [2-19]eKLR Section 3 of the [Government Lands Act](#), the case of [in the matter of National Land commission](#) (2015) eKLR and [Kenya Anti-Corruption Commission Vs Online Enterprises Limited & 4 Others](#) (2019) eKLR Counsel submitted that alienation of public land was a preserve of the president under the old law and was not one of the powers that could be exercised by the Commissioner of Lands as a delegate of the president.
24. That in the present case there is no proof of compliance with the procedure for alienating Trust Land and that the Council as the institution in whom the property vested was totally excluded from the process.
25. Counsel submitted further that a court of law must not countenance an illegality when its attention is drawn to it. That to fail to revoke the title issued to the 1st defendant will be to perpetuate an illegality and reward the 1st defendant for its actions.
26. Counsel proposed that the court awards the plaintiff Kshs.5 million against the defendants jointly and severally for loss of user. That the case at the Tribunal showed that the rent as at that time was Kshs.1,500/= per month.
27. That the 2nd defendant who is the successor of the office that allocated the land to the 1st defendant offered no defence to the accusation that the land was allocated illegally. Counsel prayed that the plaintiff's claim be allowed.
28. Vide the plaintiff's submissions dated 20th July 2023 in reply to the 1st defendant's submissions, Counsel submitted that those seeking to acquire land must be careful to ensure that the law is followed in those processes. That the 1st Defendant's acquisition of title to the suit land was a perfect case of land grabbing that was perpetrated by a politician to directly benefit the 1st Defendant. That the 1st Defendant has not produced anything to show how it got the land.
29. Counsel submitted further that under the provisions of section 26 (1) (b) of the [Land Registration Act](#) the law will not protect a certificate of title that has been acquired illegally, un-procedurally or through corrupt scheme. That there is no requirement of any proof that the title holder should have been party



to the illegal, un-procedural or corrupt scheme. For this submission, Counsel relied on the case of *Alice Chemutai Too vs Kipkurui Korir & 2 others* [2015]eKLR where it was held that

“...it needs to be appreciated that for section 26 (1) to be operative it is not necessary that the title holder be a party to the vitiating factors noted therein which are that the title was obtained illegally, un-procedurally or through a corrupt scheme.”

30. That in the instant case, the 1st Defendant was directly involved in the illegal and corrupt scheme. That the 1st Defendant did not deny its association with Pastor Dennis White and the fact that it employed the assistance of State House at the time to get the land. That the 1st Defendant did not produce a single document showing how it applied, paid for and eventually obtained the title.
31. Counsel submitted further that it was not true that the rights of the deceased plaintiff over the suit land were equitable rights as he had been allotted the land by the Council which had the power to do so. That the 1st Defendant entered the land as a tenant and there is no evidence that the relationship was ever terminated in the manner provided for by law. That section 121 of the Evidence Act Cap 80 Laws of Kenya bars the 1st Defendant from querying the title or the rights of the deceased Plaintiff as Landlord. That the rights of a landlord are built in the law and are not equitable. That the land was formally allotted to the deceased Plaintiff and the allotment minuted.
32. Counsel relied on the provisions of section 112 of the Evidence Act to submit that the 1st Defendant as the party that claims to have applied and paid for the land, it is obligated to produce such evidence. That failure to produce the evidence lends credence to the fact that it either doesn't exist and if it does exist, it will militate against the 1st Defendant's case. That as held in the Rinya case, the Commissioner of Lands cannot allocate such land under section 53 of the *Trust Lands Act* without the permission or direction of the Council.
33. Counsel submitted further that the relationship of the deceased Plaintiff to the County Council as an allottee was never terminated. That the 1st Defendant acted most mischievously and fraudulently by rushing to get the title ahead in respect of land it had proposed to buy so as to negate the rights of the Plaintiff. That the court should nullify the title and take the parties back to their relationship of Landlord and Tenant.
34. It was submitted on behalf of the 1st Defendant vide the 1st Defendant's written submissions dated 19th April 2023 that the issues for determination in the case are whether or not the suit land was irregularly or illegally allocated to the 1st Defendant and whether or not the 1st Defendant was a party to the irregularity or illegality. Counsel submitted that the 1st Defendant as the registered owner of the suit property has rights which are protected by sections 25 and 26 of the *Land Registration Act, 2012*. That the law as contained in the cited provisions takes precedence over all other alleged equitable rights in title. That the Plaintiff who asserted that the suit land was allotted to his father and therefore belonged to him did not produce anything to show that the deceased was entitled to the land. That section 107 of the Evidence Act places the burden of proof on the Plaintiff.
35. Counsel further submitted that section 114 of the repealed Constitution had an exhaustive definition of Trust Land and by virtue of section 115 of the same Constitution all Trust land within the jurisdiction of any County Council vested in the Council for the benefit of the persons ordinarily resident on that land, save for any body of water and any mineral oils. Counsel submitted that section 117 authorized County Councils to set apart any Trust Land vested in them for use and occupation by, inter alia, any person or persons for a purpose which in the opinion of that County Council is likely to benefit the persons ordinarily resident in that area.



36. Counsel submitted further that the Commissioner of Lands was given power by section 53 of the Trust Lands Act to administer Trust Land as agent of the Councils and further authorized to execute a grant, lease, license on behalf of the Councils. That nothing was placed before the court to prove the alleged irregular allocation of the suit land to the 1st Defendant. That the Plaintiff did not sue the County Council of Kisumu or its successor the County Government of Kisumu on the alleged irregular allocation of the suit land. That the 1st Defendant is therefore entitled to seek shelter under the indefeasibility of title under section 23 of the repealed Registration of titles Act which was in operation then and under which the land was registered.
37. That a certificate of title under section 23 of the repealed Registration of Titles Act was conclusive evidence of ownership as was stated in the case of *Moya Drift Farm Ltd vs Theuri* (1973) EA 114. That the same provisions are contained in section 26 of the [Land Registration Act](#). Counsel relied on the case of Republic vs Land Registrar Taita Taveta District & Another [2015] eKLR, where it was held, inter alia, that before any order may be made in terms of article 40 (6) of [the Constitution](#) of Kenya 2010 and section 26 (1) (a) of the [Land Registration Act](#) that title was acquired by fraud, the fraud, misrepresentation or illegality in the acquisition of the property must be proved to the required standard. That in the present case it has not been demonstrated that the 1st Defendant's title to the suit property was vitiated by fraud or misrepresentation to which the 1st Defendant was a party or that the certificate of title was acquired illegally, un-procedurally or through a corrupt scheme.
38. Further that the Plaintiff's claim to the suit land was based on what the plaintiff considers to be doubtful title of the 1st Defendant, that a party must rely on the strength of his case rather than the weakness of the opponent's case.
39. Vide the Supplementary submissions dated 2nd October 2023, it was submitted on behalf of the 1st Defendant that the Minutes of the Town Planning Markets and Housing Committee dated 5th October 1987 relied upon by the plaintiff did not confer any rights or interest in respect of the suit property described as "Residential (Compound) plot at Maseno Township." That there was no evidence to show that a full Council meeting sat to confer the interest in the suit land to the Plaintiff. That the Plaintiff did not exhibit any Letter of Allotment or certificate in respect of the suit land. Referring to section 3 of the [Government Lands Act](#), Counsel submitted that the making of grants or dispositions in or over unalienated government land is exclusive preserve of the President and that in so doing the President acts personally unless he expressly delegates the power to do so to the Commissioner of Lands. That in certain defined cases the powers of the President are delegated to the Commissioner of Lands. Counsel relied on the provisions of section 7 of the [Government Lands Act](#) for this submission. Counsel further submitted that it is clear from the evidence that whereas the 1st Defendant was initially the tenant of the Plaintiff and sought to buy the suit land from him, the same came to naught when it became apparent that the Plaintiff was not the registered owner thereof. That the Plaintiff having acquired no interest in the suit land had no interest which he could have transferred to the 1st Defendant, no less sue over.

Issues For Determination

40. From the pleadings filed, the evidence adduced and the submissions made by the parties, the following emerge as the issues for determination;
- a. Whether or not the deceased Plaintiff acquired proprietary rights over the suit land,
 - b. Whether or not allotment of the suit land to the 1st Defendant was irregular, fraudulent or illegal,



- c. Whether or not the Plaintiff is entitled to the relief sought in the plaint
- d. What order to make in respect of costs of the suit.

Analysis and Determination

41. The first issue for determination is whether or not the deceased plaintiff ever acquired proprietary rights over the suit land.

The Plaintiff's case is that, John Bruno Oloo, the deceased bought two houses at Maseno from Panesar Building Co. Ltd in 1969. A document dated 30th April 1969, produced as exhibit shows that John Bruno Oloo bought the two houses at Kshs.15000, that the land on which the houses were constructed did not belong to the seller and that the consideration of Kshs.15000 was for the houses only and not the land.

42. The Plaintiff produced Minutes of Town Planning, Markets and Housing Committee Meeting held on 5th October 1987 to demonstrate that the land on which the houses stood was later allotted to the deceased. The relevant Minute, namely; Minute 54/87 was titled Application for a residential (compound) plot at Maseno Township by John B. Oloo. The minute read in part

“the meeting noted that Mr. Oloo has occupied the said plot for over seventeen (17) years a fact which warranted him its possession, as long as he was prepared to pay the Council rates as directed from time to time, a condition which has already been accepted by him (Mr. Oloo). And that in addition to fulfilling the said condition he should also pay to the Council a reasonable negotiable consideration for the said transfer.

And after a careful consideration it was unanimously resolved: that Mr. John Oloo be sold the Council's compound (plot) at a negotiable price, that Mr. Oloo shall be paying to the Council annual land rates as shall be directed by the Council from time to time.”

43. I find no evidence among the documents produced by the Plaintiff that the Plaintiff ever paid the negotiable price for the land or the annual land rates mentioned in the minute as the conditions for sale of the land to the deceased Plaintiff. On cross-examination regarding this, the plaintiff stated

“the minutes show that it was resolved that the plot be sold to John Oloo (my father) at a negotiable price and that my father pays annual rent to the Council. I have no evidence of payment of annual rent.....There is no proof of payment of consideration for the land.”

44. It is clear that the Plaintiff did not comply with the conditions contained in the minute. There is also no evidence that the Plaintiff took any subsequent steps to acquire title. No allotment Letter or lease was processed.

45. My finding is that the plaintiff acquired no proprietary rights over the suit land. His tenancy with the 1st Defendant was in respect of the structures on the land which he bought from Panesar Building Co. Ltd. The purchase of the houses did not confer any proprietary rights to the deceased as the document dated 30th April 1969 was clear that the sale was in respect of the houses only. The land for all that period that the Plaintiff continued to receive rent from the 1st Defendant belonged to the government.

46. The second issue for determination is whether or not allotment of the suit land to the 1st Defendant was irregular, fraudulent or unlawful.

The Plaintiff pleaded in the further amended plaint that the issuance of the letter of allotment and subsequent title to the 1st defendant was illegal and therefore null and void on the grounds that;



- a. The suit land had already been allocated to the Plaintiff by the Council with the intention of ultimately transferring it to the Plaintiff and the 2nd Defendant purported to allocate it to the 1st Defendant without first seeking the direction of the Council as provided in section 53 of the *Trust Lands Act* Cap 288 Laws of Kenya.
 - b. The 2nd Defendant purported to allocate the suit land without the knowledge of the Council contrary to the provisions of section 53 of the *Trust Lands Act*, Cap 288 Laws of Kenya.
 - c. The actions of the 2nd Defendant in allocating the suit land without the knowledge and permission of the Council and behind the back of the Plaintiff who was in actual occupation of the suit land and was the 1st defendant's Landlord in respect thereof was negligent and in bad faith.
 - d. The 2nd Defendant issued a lease in respect of the suit land in favour of the 1st defendant despite the fact that the Defendant had not complied with the conditions of the allotment.
47. The 1st Defendant denied that the allotment was illegal, fraudulent or irregular and averred that it was the County Council of Kisumu which issued the Letter of Allotment to the Defendant and again issued the Grant of title (Lease).
48. The County Council of Kisumu was not sued or joined as a party in these proceedings. The Council was not called as a witness to authenticate or corroborate the claim and evidence of the Plaintiff. There is no evidence of any complaint by the County Council of Kisumu of illegal allotment of the suit land. The claim that the Commissioner of Lands allocated the land without the knowledge or permission of the Council was not verified. The Letter of allotment dated 28th November 1990 in favour of the 1st Defendant shows that the allotment was done on behalf of the Kisumu County Council. The allotment Letter was copied, to, among others the Clerk to Council County Council P.O Box 105 Kisumu. Similarly, the Grant in respect thereof dated 19/12/1991 was signed by the Commissioner of Lands on behalf of the County Council Of Kisumu.
49. The bundle of receipts produced by the 1st Defendant as exhibits show that the 1st defendant has been paying land rates and other dues to the County Council of Kisumu in respect of the suit land.
50. I find that it has not been proved that the allotment of the suit land to the 1st defendant was irregular, fraudulent or unprocedural
51. As to whether or not the Plaintiff is entitled to the relief sought in the plaint, having found that the Plaintiff never acquired any proprietary interest in the suit land and that allotment of the suit land to the 1st Defendant was not irregular fraudulent or unprocedural, I find no basis to award the relief sought by the plaintiff.
52. I find that the Plaintiff has not proved his case on a balance of probabilities and make the following orders:
- i. The Plaintiff's suit is dismissed.
 - ii. Costs to the 1st defendant.

Orders accordingly.

JUDGEMENT DATED AND SIGNED AT KISUMU AND DELIVERED THIS 7TH DAY OF DECEMBER, 2023 VIRTUALLY THROUGH MICROSOFT TEAMS ONLINE APPLICATION.

E. ASATI,



JUDGE.

In the presence of:

MAUREEN: COURT ASSISTANT.

Oduor holding brief Otieno David for the Plaintiff.

Maganga for the 1st Defendant.

No appearance for the 2nd Defendant

