



**Uno & 3 others v Letshego Kenya Limited & 4 others (Environment & Land Case E299 of 2022) [2025] KEELC 3355 (KLR) (23 April 2025) (Judgment)**

Neutral citation: [2025] KEELC 3355 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE E299 OF 2022**

**JO MBOYA, J  
APRIL 23, 2025**

**BETWEEN**

**MARY NJOKI UNO ..... 1<sup>ST</sup> PLAINTIFF  
SYMON NGAMAU MWANGI ..... 2<sup>ND</sup> PLAINTIFF  
PETER MWAURA MUTHURA ..... 3<sup>RD</sup> PLAINTIFF  
CECILIA GATHIGA MACHARIA ..... 4<sup>TH</sup> PLAINTIFF**

**AND**

**LETSHEGO KENYA LIMITED ..... 1<sup>ST</sup> DEFENDANT  
FRED KAMAU CHEGE ..... 2<sup>ND</sup> DEFENDANT  
CHIEF LAND REGISTRAR ..... 3<sup>RD</sup> DEFENDANT  
COUNTY GOVERNMENT OF NAIROBI ..... 4<sup>TH</sup> DEFENDANT  
KENNETH NDUMBI NJOROGE ..... 5<sup>TH</sup> DEFENDANT**

**JUDGMENT**

1. The Plaintiffs herein approached the court vide Plaint dated 17<sup>th</sup> September 2022 and wherein same sought various reliefs. The Plaint under reference was subsequently amended resting with the Amended Plaint dated 30<sup>th</sup> January 2023 and wherein the Plaintiffs have sought the following reliefs:
  - i. An order of permanent injunction restraining the Defendants whether by themselves, their employees, servants and/or agents or otherwise assigns and/or any person whatsoever acting on their behalf and/or under its mandate and/or instructions from interfering with the Plaintiffs' peaceful use, possession and enjoyment of all that property known as Plot No. 21 A, 21 B, 21 C, 21 D Kahawa West Phase II (L.R No. Nairobi Block 132/244).



- ii. A declaration that the Plaintiffs are the rightful and beneficial owners of the suit property Plot No. 21 A, 21 B, 21 C, 21 D Kahawa West Phase II (L.R No. Nairobi Block 132/244).
  - iii. An order directing the 3<sup>rd</sup> Defendant to revoke and cancel title L.R No. Nairobi Block 132/244 issued to Fred Kamau Chege.
  - iv. A declaration that the charge and/or encumbrance placed on L.R No. Nairobi Block 132/244 is a nullity and is void ab initio.
  - v. An order directing the 3<sup>rd</sup> Defendant to process and issue title deeds to the Plaintiffs herein.
  - vi. A declaration that the Plaintiff's property rights have been violated and damages to issue.
  - vii. That in the alternative, the Plaintiffs be compensated for the developments made on L.R No. Nairobi Block 132/244 (Plot No. 21 A, 21 B, 21 C, 21 D) at current market value.
  - viii. The costs of the suit and interest.
  - ix. Any other or further relief deemed just to grant by this Honourable Court.
2. The 1<sup>st</sup> Defendant [who was previously the 2<sup>nd</sup> Defendant prior to the amendment] duly entered appearance and thereafter file a Statement of Defence dated 11<sup>th</sup> October 2022 and wherein the 1<sup>st</sup> Defendant denied the claims by and on behalf of the Plaintiffs. Furthermore, the 1<sup>st</sup> Defendant contended that the suit property belongs to and is registered in the name of the 2<sup>nd</sup> Defendant who pledged the title of the suit property to secure a financial facility with the 1<sup>st</sup> Defendant. In any event, the 1<sup>st</sup> Defendant has averred that the title of the suit property is currently charged to and in favour of the 1<sup>st</sup> Defendant.
  3. The 2<sup>nd</sup> Defendant duly entered appearance and filed a Statement of Defence and Counterclaim dated 27<sup>th</sup> February 2023. The reliefs sought at the foot of the Counterclaim are as hereunder:
    - i. An order of eviction be and is hereby issued against the Plaintiffs from Parcel Number Nairobi Block 132/244 otherwise known as Plot No. 21 at Kahawa West Phase 2.
    - ii. The Officer Commanding Station at Kahawa West Police Station be and is hereby directed to supervise and offer security for the eviction of the Plaintiffs from Parcel Number Nairobi Block 132/244 otherwise known as Plot No. 21 at Kahawa West Phase 2.
    - iii. Costs and interests do abide the outcome of the counterclaim.
  4. The 3<sup>rd</sup> Defendant duly entered appearance through the Honourable Attorney General, but same did not file any statement of Defence.
  5. The 4<sup>th</sup> duly entered appearance and filed a Statement of Defence dated 13<sup>th</sup> June 2023. The 4<sup>th</sup> Defendant denied the claims by and on behalf of the Plaintiffs.
  6. The 5<sup>th</sup> Defendant duly entered appearance and thereafter filed a Statement of Defence dated 12<sup>th</sup> October 2023. Suffice it to state that the 5<sup>th</sup> Defendant contended that same was previously the lawful owner of Plot No. 21 Kahawa West Phase II which same purchased from M/S Peach Services Limited. In addition, the 5<sup>th</sup> Defendant contended that thereafter same sub-divided the plot in question into four [4] portions.



7. Furthermore, the 5<sup>th</sup> Defendant contended that upon the sub-division of the plot into four portions, same sold to and in favour of the Plaintiffs the resultant subdivisions. In this regard, the 5<sup>th</sup> Defendant contended that the Plaintiffs herein are now the lawful owners of the various sub-plots arising from the sub-divisions of Plot No. 21 Kahawa West Phase II.
8. The instant matter was subjected to the usual case conference whereupon the advocates for the parties confirmed that same had filed and exchanged the requisite lists and bundles of documents; lists of witnesses and the witness statements. In this regard, the parties thereafter confirmed that the matter was ready for hearing.
9. The Plaintiffs' case is premised on the evidence of four [4] witnesses namely; Nicodemus Mwangangi Mwanzo; Peter Mwaura Muthura; Mary Njoki Uno; and Simon Kamau Mwangi. Same testified as PW1, PMW2, PW3 and PW4 respectively.
10. It was the testimony of PW1 [Nicodemus Mwangangi Mwanzo] that same is a registered and practicing valuer. Furthermore, the witness averred that same is currently working with M/S Adrian Valuers Limited. In addition, the witness averred that same graduated from the University of Nairobi with a Bachelor's Degree in Real Estate.
11. It was the further testimony of the witness that same is a full member of the Institution of Surveyors of Kenya [ISK]. Moreover, the witness averred that same is currently licensed to undertake valuation.
12. The witness further testified that same was instructed by the Plaintiffs herein to carry out inspection and thereafter prepare a valuation report in respect of a property located at Kahawa West. For good measure, the witness posited that same thereafter visited the suit property and prepared a valuation report dated 3<sup>rd</sup> July 2023. Besides the witness sought to tender and produce the valuation report as an exhibit before the court. There being no objection to the production of the valuation report, same was tendered and produced as Plaintiffs' exhibit P24.
13. On cross-examination by learned counsel for the 1<sup>st</sup> Defendants, the witness averred that same was registered in the year 2020. Furthermore, the witness testified that same has since undertaken many valuations. However, the witness was unable to pinpoint the exact number of valuations that same has undertaken.
14. It was the further testimony of the witness that same is the one who undertook the inspection of the suit property and thereafter prepared the valuation report. In addition, the witness averred that the valuation report contains the details/identities of the plot in question.
15. While still under cross-examination, the witness averred that the property which was the subject of inspection and valuation had not been registered. Furthermore, the witness averred that same was only availed a copy of the letter of allotment.
16. The witness further testified that same was obliged to undertake a search before proceeding with the valuation. However, the witness admitted that same did not undertake any search over and in respect of the plot in question. In any event, the witness averred that same did not undertake a search in respect of the suit property because the letter of allotment was not registered.
17. It was the further testimony of the witness that same has not tendered any document to prove the existence of any developments on the property.
18. On cross-examination by learned counsel for the 2<sup>nd</sup> Defendant, the witness averred that same received instructions to undertake the valuation. Nevertheless, it was the testimony of the witness that same was not availed any certificate of title by the Plaintiffs.



19. It was the further testimony of the witness that the valuation report captures and references developments standing on the suit property. However, the witness testified that same was not able to authenticate when the structures/developments on the suit properties were constructed.
20. Moreover, it was the testimony of the witness that when he valued the property the property was one unitary piece. For good measure, the witness posited that same had no information about any subdivision of the designated plot.
21. On cross-examination by learned counsel for the 3<sup>rd</sup> Defendant, the witness averred that same was not availed any certificate of title. Nevertheless, the witness testified that he proceeded to and undertook the valuation. In any event, the witness added that the position of the property was pointed out by his clients, namely, the Plaintiffs herein.
22. The second witness who testified on behalf of the Plaintiffs was PW2 [Peter Mwaura Muthura]. It was the testimony of the witness that same is the 3<sup>rd</sup> Plaintiff. By virtue of being the 3<sup>rd</sup> Plaintiff, the witness averred that same is therefore conversant with and knowledgeable of the facts of this case. Furthermore, the witness averred that same has since recorded a witness statement dated 19<sup>th</sup> June 2023 and which witness statement, the witness sought to adopt as his evidence in chief. Suffice it to state that the witness statement dated 19<sup>th</sup> June 2023 was duly adopted and constituted as the evidence in chief of the witness.
23. The witness further adverted to the List and Bundle of Documents dated 17<sup>th</sup> September 2022 and thereafter sought to tender and produce the documents as exhibits before the court. There being no objection to the production of the documents, same were tendered and produced as exhibits P1-P5, respectively.
24. Additionally, the witness referenced a Further List and Bundle of Documents dated 12<sup>th</sup> September 2023 containing a total of twenty-five documents. The witness thereafter sought to tender and produce the documents as further exhibits before the court. There being no objection to the production of the documents, same were produced and admitted as exhibits P6-P30 respectively.
25. Furthermore, the witness highlighted the Amended Plaint dated 30<sup>th</sup> January 2023 and thereafter sought to adopt the contents thereof. Besides, the witness implored the court to grant the reliefs sought thereunder.
26. It was the further testimony of the witness that the Plaintiffs herein also filed a Reply to Defence and Defence to the Counterclaim dated 19<sup>th</sup> June 2023. To this end, the witness also sought to adopt and rely on the contents of the Reply to Defence and Defence to Counterclaim.
27. On cross-examination by learned counsel for the 1<sup>st</sup> Defendant, the witness averred that same entered into and executed a sale agreement with the 5<sup>th</sup> Defendant. Furthermore, the witness averred that same proceeded to and paid the purchase price. However, the witness acknowledged that same has not produced a copy of the receipt confirming payment of the purchase price.
28. It was the further testimony of the witness that even though same has not produced the receipt, he [witness] has however availed the transfer document. Furthermore, the witness testified that same has also availed a copy of the letter of allotment dated 15<sup>th</sup> September 1998.
29. While still under cross-examination, the witness averred that the letter of allotment which same has produced before the court contains various endorsements/ notation[s] on the face thereof.
30. It was the further testimony of the witness that the letter of allotment was first issued to Fransisca Mwendwa and Solomon Mwendwa. For good measure, the witness averred that the Letter of Allotment shows the names of the original allottees.



31. It was the further testimony of the witness that the letter of allotment contained special conditions. In any event, the witness posited that the conditions were duly complied with. However, the witness averred that the payment was to be made within thirty days from the date of allotment.
32. While still under cross-examination, the witness averred that same has not availed any evidence to show compliance with the terms of the letter of allotment. Nevertheless, and upon being referred to exhibit P3, the witness stated that the document in question is dated 6<sup>th</sup> October 2020. In any event, the witness admitted that the date shown at the foot of exhibit P3 falls outside the thirty-day period.
33. It was the further testimony of the witness that by the time the payments reflected at the foot of exhibit P3 were being made, the letter of allotment had lapsed. For coherence, the witness conceded that the letter of allotment had ceased to exist.
34. It was the further testimony of the witness that same did not conduct any search at the County Government of Nairobi. Nevertheless, the witness averred that same entered upon and took possession of the plot in question.
35. Furthermore, the witness testified that same has tendered and availed to court copies of various sale agreements to demonstrate that the rest of the Plaintiffs also bought portions of Plot No. 21 Kahawa West Phase II. In any event, the witness added, that before the Plaintiffs purchased portions of the plot same conducted a search. However, the witness conceded that no evidence of the search has been tendered and produced before the court.
36. It was the further testimony of the witness that same has never been issued with a certificate of lease. In any event, the witness testified that same does not know whether the 5<sup>th</sup> Defendant surveyed the property. Furthermore, the witness also averred that he does not know whether the suit plot had been sub-divided.
37. Be that as it may, the witness testified that the rest of the Plaintiffs bought various sub-plots from the 5<sup>th</sup> Defendant.
38. On cross-examination by learned counsel for the 2<sup>nd</sup> Defendant, the witness averred that same bought the plot without a title. In addition, the witness averred that same acted on the basis of a letter of allotment. Besides, the witness posited that the letter of allotment is dated 15<sup>th</sup> September 1998.
39. Additionally, the witness averred that even though same bought/purchased a sub-plot out of Plot No. 21 Kahawa West Phase II, same [witness] was never issued with a new letter of allotment. However, the witness averred that the letter of allotment dated 15<sup>th</sup> September 1998 contained an endorsement including himself.
40. It was the further testimony of the witness that same does not have a certificate of title. However, the witness averred that the 2<sup>nd</sup> Defendant has a certificate of title. In any event, the witness posited that he has not alleged that the 2<sup>nd</sup> Defendant's certificate of title is false.
41. While still under cross-examination, the witness averred that the plot was partitioned into portions. Nevertheless, the witness acknowledged that same has not tendered before the court any sub-division scheme.
42. It was the further testimony of the witness that by the time the 5<sup>th</sup> Defendant was selling portions of Plot No. 21 Kahawa West Phase II, the 5<sup>th</sup> Defendant did not have a certificate of title. Furthermore, the witness stated that the 5<sup>th</sup> Defendant also did not have any letter of allotment in his name.



43. On cross examination by learned counsel for the 3<sup>rd</sup> Defendant, the witness averred that same has never taken the letter of allotment to the Chief Land Registrar. Furthermore, the witness added that same has not produced any evidence of a certificate of official search.
44. It was the further testimony of the witness that the 2<sup>nd</sup> Defendant's title is fraudulent. Nevertheless, the witness averred that same has not tendered any evidence to show fraud against the 2<sup>nd</sup> Defendant.
45. On re-examination, the witness averred that same indeed purchased a portion of the suit plot. Furthermore, the witness added that the letter of allotment which has been produced before the court shows that the plot was transferred to himself [witness].
46. While still under re-examination, the witness averred that the stand premium at the foot of the letter of allotment was paid by Mary Njoki. In any event, the witness added that the payment was made on 6<sup>th</sup> October 2020.
47. It was the further testimony of the witness that same has also tendered and produced a letter showing that the ground rent was paid. For good measure, the witness averred that the ground rents were paid on 16<sup>th</sup> May 2018.
48. Other than the foregoing, the witness testified that same has also tendered and produced a letter from Nairobi City County confirming that the plots [namely, the sub-plots] belong to the Plaintiffs.
49. The third witness who testified on behalf of the Plaintiff is PW3 [Mary Njoki Uno]. It was the testimony of the witness that same is the 1<sup>st</sup> plaintiff in respect of the instant matter. Furthermore, the witness averred that by virtue of being the 1<sup>st</sup> Plaintiff, same [witness] is therefore conversant with and knowledgeable of the facts of the instant case.
50. Additionally, the witness averred that same has since recorded a witness statement dated 19<sup>th</sup> June 2023. To this end, the witness sought to adopt and rely on the contents of the witness statement. Instructively, the witness statement dated 19<sup>th</sup> June 2023 was duly constituted as the evidence in chief of the witness.
51. It was the further testimony of the witness that same bought plot no. 21A from the Kennedy Ndumbi Njoroge. Furthermore, the witness added that the plot in question is located at Kahawa West.
52. It was the further testimony of the witness that even though same bought plot number 21A Kahawa West, same did not proceed to the Land registry to pursue registration.
53. It was the further testimony of the witness that same is aware that the Plaintiffs have been sued by the 2<sup>nd</sup> Defendant. To this end, the witness referenced the counterclaim filed by the 2<sup>nd</sup> Defendant. Nevertheless, the witness averred that same has filed a Statement of Defence to the Counterclaim.
54. On cross-examination by learned counsel for the 1<sup>st</sup> Defendant, the witness averred that same bought Plot No. 21A. Moreover, the witness averred that same paid the sum of KShs. 900,000/- only. In any event, it was posited that the purchase price was paid vide banker's cheque.
55. It was the testimony of the witness that same bought the plot from the 5<sup>th</sup> Defendant. Nevertheless, the witness clarified that by the time same bought her plot, the 5<sup>th</sup> Defendant did not have title to the suit property.
56. It was the further testimony of the witness that the 5<sup>th</sup> Defendant had a letter of allotment. Furthermore, the witness acknowledged that the letter of allotment contained special conditions. However, the witness stated that same is not aware of whether the special conditions were complied



with. In particular, the witness added that she does not know whether the vendor made the payments in accordance with the terms of the letter of allotment.

57. While still under cross-examination, the witness averred that Nairobi City County Government generated and issued a letter dated 17<sup>th</sup> October 2022. For good measure, the witness averred that the letter under reference was addressed to the Plaintiffs' advocates. In any event, the witness posited that the letter in question confirmed that the 5<sup>th</sup> Defendant was lawfully issued with a letter of allotment.
58. On further cross-examination, the witness averred that even though the letter from Nairobi City County adverts to a letter of allotment issued in favour of the 5<sup>th</sup> Defendant, it was acknowledged that there is no letter of allotment bearing the name of the 5<sup>th</sup> Defendant.
59. It was the further testimony of the witness that the letter of allotment bears the name of one Mercy Mugo and not the name of the 5<sup>th</sup> Defendant.
60. On cross-examination by learned counsel for the 2<sup>nd</sup> Defendant, the witness averred that same bought/purchased the plot in question without a certificate of title. In particular, the witness averred that the land only had a letter of allotment. Furthermore, the witness added that same has tendered and produced a copy of the letter of allotment.
61. It was the further testimony of the witness that the letter of allotment shows that same was issued to M/S Peach Services Limited.
62. It was the further testimony of the witness that same undertook and conducted due diligence before purchasing the plot. Nevertheless, the witness acknowledged that same has not tendered any evidence of due diligence that was ever taken.
63. The witness further averred that same has since constructed a house on the plot. Furthermore, the witness added that same has availed photographs of the house that same has constructed on the plot in question.
64. On cross examination by learned counsel for the 3<sup>rd</sup> Defendant, the witness averred that same did not register any restriction over and in respect of the suit property. In addition, the witness averred that same has never forwarded any transfer instrument to the Chief Land Registrar.
65. On cross-examination by learned counsel for the 5<sup>th</sup> Respondent, the witness averred that same bought/purchased Plot no. 21A Kahawa West Phase 2. Furthermore, the witness averred that at the time of entering into the sale agreement the 5<sup>th</sup> Defendant only had a letter of allotment relating to Plot no. 21 Kahawa West Phase II.
66. On further cross-examination, the witness averred that same has been able to see the letter of allotment in favour of the 2<sup>nd</sup> Defendant. Nevertheless, the witness added that the letter of allotment in favour of the 2<sup>nd</sup> Defendant is in respect of Plot No. 21 Kahawa West Phase II infill.
67. The fourth witness who testified on behalf of the Plaintiffs was Simon Kamau Mwangi [PW4]. Same averred that he is the 2<sup>nd</sup> Plaintiff. Furthermore, the witness added that same has since recorded a witness statement dated 19<sup>th</sup> June 2023 and which witness statement the witness sought to adopt and rely on as his evidence in chief. Instructively, the witness statement was duly admitted and adopted as the evidence in chief of the witness.
68. Moreover, the witness averred that same bought his plot from the 5<sup>th</sup> Defendant. Nevertheless, the witness confirmed that by the time he bought his plot from the 5<sup>th</sup> Defendant, the 5<sup>th</sup> Defendant did not have any certificate of title.



69. On cross-examination by learned counsel for the 1<sup>st</sup> Defendant, the witness averred that he bought his plot from one Rose Wambui. Furthermore, it was the testimony of the witness that it is the said Rose Wambui who bought the plot from the 5<sup>th</sup> Defendant.
70. On further cross-examination, the witness averred that the plot in question was allocated to Mercy Mugo. In addition, the witness averred that it is Mercy Mugo who transferred the plot to Peach Services Limited. Besides, the witness posited that the letter of allotment was thereafter transferred to Kenneth Ndumbi Njoroge [5<sup>th</sup> Defendant].
71. While still under cross-examination, the witness averred that the letter of allotment in question is dated 15<sup>th</sup> September 1998. At any rate, the witness testified that same is aware that Mercy Mugo made payments. However, the witness added that the receipt that has been tendered shows that Mercy Mugo made payment on 25<sup>th</sup> July 2005. Moreover, the witness averred that by the time, the payments was being made by Mercy Mugo, the plot had already been transferred to the 5<sup>th</sup> Defendant.
72. It was the further testimony of the witness that the title in the name of the 2<sup>nd</sup> Defendant is illegal and fraudulent. Furthermore, the witness added that the City County Government of Nairobi has since disowned the Certificate of Title by the 2<sup>nd</sup> Defendant.
73. On cross-examination by learned counsel for the 2<sup>nd</sup> Defendant, the witness averred that the certificate of title in favour of the 2<sup>nd</sup> Defendant is fraudulent. However, the witness averred that same has never lodged any complaint with the Directorate of Criminal Investigations.
74. While still under cross-examination, the witness averred that same did not buy his plot from the 5<sup>th</sup> Defendant.
75. On cross-examination by the 4<sup>th</sup> Defendant, the witness averred that the letter of allotment is dated 15<sup>th</sup> September 1998. Furthermore, the witness testified that the letter of allotment is in the name of Peach Investment Limited.
76. On further cross-examination, the witness testified that the letter of allotment in favour of the 2<sup>nd</sup> Defendant relates to a plot in Kahawa West Phase II infills; and not Kahawa West Phase 2.
77. With the foregoing testimony, the Plaintiffs' case was closed.
78. The 1<sup>st</sup> Defendant's case is anchored on the evidence of one witness, namely Pesian Ketare. Same testified as DW1. It was the testimony of the witness [DW1] that same is an employee of the 1<sup>st</sup> Defendant. Furthermore, the witness averred that same is currently the Loan Recovery officer and thus same is conversant with the facts of the instant matter.
79. It was the further testimony of the witness that same has since recorded a witness statement dated 7<sup>th</sup> December 2022. To this end, the witness sought to adopt and rely on the witness statement under reference. Suffice it to state that the witness statement was thereafter adopted and constituted as the evidence in chief of the witness.
80. The witness further adverted to the List and Bundle of Documents dated 11<sup>th</sup> October 2022 containing four documents. In addition, the witness sought to tender and produce the documents as exhibits before the court. There being no objection to the production of the document, same were tendered and produced as exhibits D1-D4 respectively on behalf of the 1<sup>st</sup> defendant.
81. On cross-examination by learned counsel for the Plaintiff, the witness averred that the suit property is currently charged to and in favour of the 1<sup>st</sup> Defendant. In addition, it was averred that the 1<sup>st</sup>



- Defendant undertook a search over and in respect of the suit property. Nevertheless, the witness conceded that same has neither tendered nor produced a copy of the search before the court.
82. It was the further testimony of the witness that the 1<sup>st</sup> Defendant also undertook a valuation over the suit property. In this regard, the witness averred that the valuation report has been tendered and produced before the court.
  83. While still under cross-examination, the witness averred that the suit property has various developments thereon. Nevertheless, the witness averred that the suit property belongs to and is registered in the name of the 2<sup>nd</sup> Defendant.
  84. It was the further testimony of the witness that the 1<sup>st</sup> Defendant approached the 1<sup>st</sup> Defendant with a view to procuring a financial facility. Furthermore, the witness averred that the 1<sup>st</sup> Defendant indeed granted to the 2<sup>nd</sup> Defendant the financial facility that was sought.
  85. Additionally, the witness averred that prior to and before the financial facility could be granted, the 1<sup>st</sup> Defendant carried out and undertook a valuation over and in respect of the suit property.
  86. It was the further testimony of the witness that the suit property remains charged to and in favour of the 1<sup>st</sup> Defendant. In any event, the witness added that the charge has been produced before the court. Furthermore, the witness testified that the charged contains warranties which were made by the 2<sup>nd</sup> Defendant.
  87. On cross-examination by learned counsel for the 3<sup>rd</sup> Defendant, the witness averred that the 2<sup>nd</sup> Defendant borrowed KShs. 4,000,000 only. Besides, the witness testified that prior to the disbursement of the loan facility, the 1<sup>st</sup> Defendant undertook valuation in respect of the suit property.
  88. On cross-examination by learned counsel for the 4<sup>th</sup> Defendant, the witness averred that even though the 1<sup>st</sup> Defendant undertook a search over the suit property, the certificate of search has not been produced before the court.
  89. On cross-examination by learned counsel for the 5<sup>th</sup> Defendant, the witness averred that the 2<sup>nd</sup> Defendant made some repayments towards the loan facility. Nevertheless, it was stated that the loan facility still remains in arrears.
  90. On re-examination, the witness testified that the valuation over and in respect of the suit property was undertaken in the year 2020. Furthermore, the witness posited that the suit property was visited by one of the officers from the 1<sup>st</sup> Defendant.
  91. While still under re-examination, the witness averred that the suit property is developed with various residential houses. Moreover, the witness testified that the suit property shows that same has been subdivided on the ground.
  92. With the foregoing testimony, the 1<sup>st</sup> Defendant's case was closed.
  93. The testimony of the 2<sup>nd</sup> Defendant is premised on the testimony of one witness, namely; Fred Kamau Chege. Same testified as DW2. It was the testimony of the witness that same is the 2<sup>nd</sup> Defendant. Furthermore, the witness averred that by virtue of being the 2<sup>nd</sup> Defendant same is conversant with and knowledgeable of the facts of the instant matter. In addition, the witness averred that same has since recorded a witness statement dated 27<sup>th</sup> February 2023 and which witness statement same [Witness] sought to adopt and rely on as his evidence in chief. Instructively, the witness statement was adopted and constituted as the evidence in chief of the witness.



94. It was the further testimony of the witness that same has also filed a List and Bundle of Documents dated 27<sup>th</sup> February 2023 and which documents the witness sought to tender and produce before the court as exhibits. In this regard, the witness tendered and produced the documents as exhibits D1-D5 respectively on behalf of the 2<sup>nd</sup> Defendant.
95. Furthermore, the witness averred that same has also filed a Statement of Defence dated 27<sup>th</sup> February 2023 as well as a Counterclaim. To this end, the witness implored the court to grant the reliefs sought at the foot of the Counterclaim.
96. On cross-examination by learned counsel for the 1<sup>st</sup> Defendant, the witness averred that same was lawfully allocated Plot No. 21 Kahawa West Phase II vide letter of allotment dated 27<sup>th</sup> October 1992. Furthermore, the witness averred that thereafter, same complied with the terms of the letter of allotment culminating into the issuance of a certificate of lease thereto. In particular, the witness averred that the Certificate of Lease has been tendered and produced before the court.
97. It was the further testimony of the witness that the suit property is currently charged to and in favour of the 1<sup>st</sup> Defendant. Moreover, the witness clarified that the suit property is charged to secure a financial facility in the sum of KShs. 4,000,000 Only.
98. While still under cross-examination, the witness testified that same made various repayments towards liquidation of the loan facility. Nevertheless, the witness averred that the loan facility remains in arrears.
99. Additionally, the witness testified that the suit property lawfully belongs to him. In any event, the witness averred that same has never dealt with the Plaintiffs over and in respect of the suit property.
100. On the other hand, the witness testified that the suit property is currently occupied by the Plaintiffs. Nevertheless, the witness averred that the Plaintiffs do not have any lawful rights and/or interests thereto.
101. While under further cross-examination, the witness averred that the suit property was lawfully allocated to him by the City Council of Nairobi. Thereafter, same was issued with a lease instrument which was presented for registration. Moreover, the witness averred that it was after the lease instrument was duly registered that same [witness] was issued with a certificate of title.
102. On cross-examination by learned counsel for the 3<sup>rd</sup> Defendant, the witness averred that the suit property was allocated to same on 27<sup>th</sup> October 1992. Furthermore, the witness averred that thereafter same proceeded to and obtained a certificate of lease.
103. It was the further testimony of the witness that same sought and obtained a loan facility from the 1<sup>st</sup> Defendant. In this regard, the witness averred that same was given a facility of KShs. 4,000,000 only.
104. On cross-examination by learned counsel for the 5<sup>th</sup> Defendant, the witness averred that same was issued with a letter of allotment relating to Plot No. 21 Kahawa West Phase II infills. Besides, the witness averred that the letter of allotment in favour of the 5<sup>th</sup> Defendant references Plot No. 21 Kahawa West Phase II.
105. On further cross-examination, the witness averred that the two letters of allotment are not the same. Nevertheless, the witness averred that same is not privy to the difference between Plot No. 21 Kahawa West Phase II and Plot No. 21 Kahawa West Phase II infills. In any event, the witness testified that it is the Nairobi City Council [now defunct] or the Nairobi City County who can confirm the status of the two plots.



106. Moreover, the witness testified that the plot which is in dispute before the court belongs to and is registered in his name. In addition, the witness averred that same proceeded to and placed a caveat emptor on the land.
107. On cross-examination by learned counsel for the Plaintiff, the witness averred that same was allocated a letter of allotment dated 27<sup>th</sup> October 1992. Furthermore, the witness clarified that the letter of allotment was in respect of Plot No. 21 Kahawa West Phase II infills. However, the witness reiterated that same does not know whether the Kahawa West Phase II and Kahawa West Phase II infills relate to one and the same area.
108. It was the further testimony of the witness that after being allocated the plot at the foot of the letter of allotment, same [witness] was taken to the plot by a surveyor of the City Council of Nairobi. Furthermore, the witness averred that same duly complied with the terms of the letter of allotment.
109. While still under cross-examination, the witness testified that even though same complied with the terms of the letter of allotment, same has not produced before the court evidence of the letter of acceptance of the allotment.
110. On the other hand, the witness averred that same has never transacted with the Plaintiffs in respect of the suit property. In any event, the witness added that the Plaintiffs have trespassed onto the suit property.
111. It was the further testimony of the witness that the suit property is currently charged to the 1<sup>st</sup> Defendant. Moreover, the witness averred that the facility at the foot of the charge has not been fully liquidated.
112. Additionally, the witness testified that the suit property belongs to him. On the contrary, the witness testified that the suit property does not belong to the Plaintiffs.
113. On re-examination, the witness averred that the suit property is lawfully registered in his name. Furthermore, the witness testified that the certificate of title shows that he is the owner of the property. In any event, the witness posited that the certificate of title has never been challenged in any way.
114. It was the further testimony of the witness that the suit property is currently charged to and in favour of the 1<sup>st</sup> Defendant. Moreover, the witness averred that the loan facility remains in arrears.
115. With the foregoing testimony, the 2<sup>nd</sup> Defendant's case was duly closed.
116. The 3<sup>rd</sup> Defendant herein duly entered appearance, but same did not file any Statement of Defence. Furthermore, the 3<sup>rd</sup> Defendant also did not file any List of witnesses or witness statement. In this regard, the 3<sup>rd</sup> Defendant's case was closed without any evidence being tendered.
117. The 4<sup>th</sup> Defendant's case is premised on the testimony on one witness, namely; Benson Ndegwa Gichohi. Same testified as DW3. It was the testimony of the witness that same is an employee of the City County Government of Nairobi. Furthermore, the witness averred that by virtue of being the employee of the City County Government of Nairobi, same is knowledgeable of and conversant with the facts of the case.
118. Additionally, the witness averred that same has since recorded a witness statement dated 26<sup>th</sup> October 2023. To this end, the witness sought to adopt and rely on the contents of the witness statement. Suffice it to say that the witness statement was duly adopted and constituted as the evidence in chief on behalf of the witness.



119. The witness further referenced the List and Bundle of Documents dated 18<sup>th</sup> October 2023 and thereafter same sought to tender and produce the documents thereunder as exhibits before the court. There being no objection to the production of the documents, same were tendered and produced as exhibits to D1-D4 respectively on behalf on the 4<sup>th</sup> Defendant. Besides, the witness highlighted the Statement of Defence dated 13<sup>th</sup> June 2023 and whose contents the witness sought to adopt and rely on.
120. On cross-examination by learned counsel for the 1<sup>st</sup> Defendant, the witness averred that same is currently an employee of the City County Government of Nairobi. Nevertheless, the witness added that previously, same was an employee of the City Council of Nairobi. In any event, the witness averred that same has worked with the City Council of Nairobi and now the City County Government of Nairobi for a duration of over thirty-four years.
121. It was the testimony of the witness that the Plot in question was initially allocated to Mercy Mugo. To this end, the witness averred that same has since availed a copy of the letter of allotment before the court.
122. It was the further testimony of the witness that the suit plot was thereafter transferred to M/S Peach Services Limited. In addition, the witness averred that later on the letter of allotment was transferred to the current owners.
123. It was the further testimony of the witness that the transfer of the letter of allotment was/is endorsed on the face thereof. Furthermore, the witness testified that the terms and conditions of the letter of allotment were duly complied with.
124. On further cross-examination, the witness testified that the allottee issued and generated a letter of acceptance. However, the witness admitted that same has not tendered a copy of the letter of acceptance before the court.
125. Moreover, it was the testimony of the witness that the letter of allotment was duly paid for. In addition, the witness averred that the letter of allotment in favour of Mercy Mugo was made/issued in 1992.
126. While still under cross-examination, the witness averred that the allottee of the suit plot duly complied with the terms of the letter of allotment. However, the witness acknowledged that the payments at the foot of the letter of allotment was made in the year 2005.
127. It was the further testimony of the witness that the letter of allotment was thereafter transferred to M/S Peach Investment Services. In addition, it was averred that Peach Investment Services was obliged to meet the conditions shown at the foot of the letter of allotment. However, the witness acknowledged that same has not tendered any evidence to show that Peach Investment Limited complied with the terms of the letter of allotment.
128. Upon being referred to the 4<sup>th</sup> Defendant's Statement of Defence, the witness averred that the 4<sup>th</sup> Defendant has denied that the Plaintiffs are the owners of the suit property. Furthermore, the witness averred that the suit plot has since been sub-divided. However, the witness posited that same does not have any sub-division scheme in respect of the suit plots.
129. On the contrary, the witness testified that the only thing which same has brought before the court is a copy of the beacon certificate.
130. On cross-examination by learned counsel for the 2<sup>nd</sup> Defendant, the witness testified that even though same has stated that he is an employee of the City County Government of Nairobi, same has neither tendered nor produced any evidence to confirm that he is an employee of the City County Government



- of Nairobi. In addition, the witness averred that same has also not produced any sub-division scheme before the court.
131. While still under cross-examination, the witness testified that no fresh letter of allotment was issued in favour of the Plaintiffs. Besides, the witness averred that the Plaintiffs have never been issued with any certificate of title.
  132. It was the testimony of the witness that suit property is currently registered in the name of the 2<sup>nd</sup> Defendant. Furthermore, the witness added that the 2<sup>nd</sup> Defendant has a certificate of title in respect of the suit property.
  133. It was the testimony of the witness that the letter of allotment being relied on by the Plaintiffs was issued on 15<sup>th</sup> September 1998. Furthermore, the witness testified that the letter in question relates to Plot No. 21 Kahawa West Phase II.
  134. Regarding the letter of allotment dated 27<sup>th</sup> October 1992, the witness averred that same relates to Plot No. 21 Kahawa West Phase II infills. In addition, the witness averred that the acreage of the plot at the foot of the said letter of allotment is shown to be 0.0952 Ha. Furthermore, the witness averred that the letter of allotment dated 27<sup>th</sup> October 1992 and the letter of allotment dated 15<sup>th</sup> September 1998 do not relate to the same plot/property.
  135. The witness further testified that the letter of allotment dated 15<sup>th</sup> September 1998 contains several notations/endorsements thereon. In particular, the witness averred that the notations relate to the transfers which were being endorsed on the face thereof.
  136. It was the further testimony of the witness that the letter of allotment dated 27<sup>th</sup> October 1992 is said to have been issued to the 2<sup>nd</sup> Defendant. In any event, the witness averred that the issuing authority is indicated to be Nairobi City Council. However, the witness testified that in 1992 the affairs of the City Council of Nairobi were being managed by the Nairobi City Commission and not the City Council. In any event, the witness posited that the City County Government of Nairobi does not recognise the letter of allotment in favour of the 2<sup>nd</sup> Defendant.
  137. On the contrary, the witness averred that the City County Government of Nairobi recognises the letter of allotment dated 15<sup>th</sup> September 1998.
  138. On cross-examination by learned counsel for the Plaintiffs, the witness averred that no titles have been issued over and in respect of the area known as Kahawa West Phase II. Furthermore, the witness averred that the County Government of Nairobi issued notices relating to plots situate at Kahawa West Phase 1, II and infills to surrender their documents for purposes of issuance of titles. For good measure, the witness clarified that the notices were in respect of the specified areas.
  139. It was the further testimony of the witness that a person who has a letter of allotment over Kahawa West Phase II infills cannot be issued with a certificate of title over a plot in Kahawa West Phase II.
  140. Nevertheless, the witness averred that same wrote a letter to the Plaintiffs and confirmed that the plots in question belong to the Plaintiffs. In particular, the witness averred that the contents of the said letter are correct. On the other hand, the witness averred that the authenticity of the certificate of title held by the 2<sup>nd</sup> Defendant is being investigated by the DCI. In addition, the witness also averred that the said certificate of title is also being investigated by the City County Government of Nairobi.
  141. On re-examination, the witness averred that the plots at Kahawa West Phase II are different from those at Kahawa West Phase II Infills. Besides, the witness averred that the letter of allotment issued on 15<sup>th</sup> September 1998 relates to the suit plots.



142. While still under re-examination, the witness averred that the letter of allotment dated 15<sup>th</sup> September 1998 is the authentic letter of allotment.
143. It was the further testimony of the witness that the Plaintiffs are the true owners of the suit plots. In any event, the witness added that the area has not been issued with certificate of titles. Furthermore, the witness posited that same only saw the certificate of title in favour of the 2<sup>nd</sup> Defendant before the court.
144. With the foregoing testimony, the 4<sup>th</sup> Defendant's case was duly closed.
145. The 5<sup>th</sup> Defendant's case is premised on the evidence of one witness namely, Kenneth Ndumbi Njoroge. Same testified as DW4. It was the testimony of the witness that same is the 5<sup>th</sup> Defendant. Furthermore, the witness averred that by virtue of being the 5<sup>th</sup> Defendant, same is conversant with and knowledgeable of the facts of the case.
146. It was the further testimony of the witness that same has equally recorded a witness statement dated 16<sup>th</sup> October 2023 and which witness statement the witness sought to adopt and rely on as his evidence in chief. To this end, the witness statement dated 16<sup>th</sup> October 2023 was duly adopted and constituted as the evidence in chief of the witness.
147. Additionally, the witness averred that same has also filed a List and Bundle of Documents dated the 16<sup>th</sup> October 2023. In this regard, the witness sought to tender and produce the documents as exhibits before the court. There being no objection to the production of the documents, same were tendered and produced as exhibits D1 and D2 on behalf of the 5<sup>th</sup> Defendant.
148. Moreover, the witness testified that same has also filed a Statement of Defence dated 12<sup>th</sup> October 2023. Suffice it to state that the witness sought to adopt and rely on the contents of the Statement of Defence.
149. On cross examination by learned counsel for the 2<sup>nd</sup> Defendant, the witness averred that same bought the plot in question without a certificate of title. Furthermore, the witness averred that when same bought the plot the vendor only had a letter of allotment.
150. It was the further testimony of the witness that after he purchased the plot, same was never issued with a letter of allotment. Nevertheless, the witness averred that same has tendered and produced a copy of the letter of allotment bearing the endorsement in his favour.
151. While still under cross-examination, the witness averred that after purchasing the plot, same sub-divided the plot into various sub-plots. Nevertheless, the witness averred that same has not produced any sub-division scheme before the court.
152. It was the further testimony of the witness that same bought the plot for Peach Investment Services Limited. Furthermore, the witness stated that same has produced a copy of the sale agreement that was entered into between Peach Investment Services Limited and himself.
153. On cross-examination by learned counsel for the 1<sup>st</sup> Defendant, the witness averred that upon purchasing the suit plot from Peach Investment Services Limited, same paid the entire purchase price. Nevertheless, the witness averred that same has not tendered any evidence as pertains to the payments. Be that as it may, the witness testified that the vendor who sold the plot has never disputed the sale.
154. While still under cross-examination, the witness averred that it is him who undertook the sub-division of the plot. Nevertheless, the witness averred that the sub-division[s] were informal in nature.
155. The witness further averred that same has not produced any approved sub-division scheme before the Court.



156. On cross-examination by learned counsel for the Plaintiff, the witness averred that same purchased Plot No. 21 Kahawa West Phase II. Furthermore, the witness stated that it is him who sub-divided the plot into four portions. Besides, the witness averred that he thereafter sold the portions to various persons including the Plaintiffs.
157. While under further cross-examination, the witness averred that the Plaintiffs herein entered upon and took possession of the sub-divided plots. Moreover, the witness averred that the Plaintiffs have since undertaken developments on the sub-plots.
158. It was the further testimony of the witness that same complied with the terms of the letter of allotment.
159. On re-examination, the witness averred that it is him who sold the sub-plots to the Plaintiffs. Besides, the witness averred that he bought Plot No. 21 Kahawa West Phase II from Peach Investment Services Limited. In addition, the witness testified that same paid the entire purchase price to Peach Investment Services Limited.
160. It was the further testimony of the witness that Peach Investment Services Limited have never denied that same sold Plot No. 21 Kahawa West Phase II unto him.
161. Finally, the witness averred that upon acquisition of the suit plot [Plot No. 21 Kahawa West Phase II], same remained in possession thereof for over twenty years before selling the sub-plots to the Plaintiffs.
162. With the foregoing testimony, the 5<sup>th</sup> Defendant's case was closed.
163. Upon closure of the hearing, the advocates for the parties covenanted to file and exchange written submissions. To this end, the court proceeded to and issued direction[s]. Furthermore, the court circumscribed timelines for the filing of written submissions.
164. The Plaintiffs filed written submissions dated 19<sup>th</sup> February 2025 and the Supplementary Submissions dated 5<sup>th</sup> April 2025. At the foot of the submissions dated 19<sup>th</sup> February 2025, the Plaintiffs have highlighted four issues namely, that the Plaintiffs are the lawful owners of Plot No. 21A, 21B, 21C and 21D [Being sub-plots arising out of Plot No. 21 Kahawa West Phase II]; that the 2<sup>nd</sup> Defendant's certificate of title was fraudulently procured; that the letter of allotment in favour of the 2<sup>nd</sup> Defendant relates to Plot No. 21 Kahawa West Phase II infills and thus cannot give rise to a certificate of title in respect of Plot No. 21 Kahawa West Phase II; and finally, that the charge in favour of the 1<sup>st</sup> Defendant is a nullity.
165. At the foot of the Supplementary Submissions dated 5<sup>th</sup> April 2025, the Plaintiffs have highlighted two [2] key issues, namely; that the plots known as Plot No. 21 Kahawa West Phase II and Plot No. 21 Kahawa West Phase II infills are two separate and distinct plots and that the certificate of title held by the 2<sup>nd</sup> Defendant was procured irregularly and illegally and thus the 2<sup>nd</sup> Defendant has no lawful entitlement to the suit property.
166. The 1<sup>st</sup> Defendant filed written submissions dated 24<sup>th</sup> March 2025 and wherein it has highlighted three issues for consideration, namely, who is the lawful owner of property known as Title Number Nairobi/Block 132/244 (the suit property); whether the charge registered against the title for the property known as Title Number Nairobi/Block 132/244 is valid; and whether the Plaintiffs should be awarded the reliefs sought.
167. The 2<sup>nd</sup> Defendant filed written submissions dated 4<sup>th</sup> March 2025 and wherein he has highlighted three issues for consideration by the court, namely whether the Plaintiffs have established legitimate ownership of the suit land; whether the 2<sup>nd</sup> Defendant has established legitimate ownership of the suit land; and whether the Counterclaim is merited.



168. The 4<sup>th</sup> Defendant filed written submissions dated 20<sup>th</sup> February 2025 and wherein the 4<sup>th</sup> Defendant has highlighted two issues for consideration by the court, to wit, which party has the rightful claim of the suit property; and who should bear the costs of the suit.
169. The 5<sup>th</sup> Defendant filed written submissions dated 21<sup>st</sup> February 2025 and wherein the 5<sup>th</sup> Defendant has highlighted five issues for consideration by the court, namely, whether Plot No. 21 Kahawa West Phase II and Plot No. 21 Kahawa West Phase II infills are the same and on the same physical location; whether Title No. Nairobi/Block 132/244 is issued with regard to Plot No. 21 Kahawa West Phase II or Plot No. 21 Kahawa West Phase II infills; whether Title Number Nairobi/Block 132/244 was lawfully obtained to be entitled to protection of the law; whether the Plaintiffs are entitled to the prayers sought in the Amended Plaint; and whether the 2<sup>nd</sup> Defendant is entitled to prayer sought in the Counterclaim.
170. Having reviewed the pleadings; the evidence tendered [both oral and documentary] and upon consideration of the written submissions filed by and on behalf of the parties, I come to the conclusion that the determination of the dispute beforehand turns on four key issues, namely, whether the 5<sup>th</sup> Defendant accrued and/or acquired any lawful rights in respect of (sic) Plot No. 21 Kahawa West Phase II or otherwise and whether the 5<sup>th</sup> Defendant had any title to convey to the Plaintiffs, if at all; whether Plot Nos. 21A, 21B, 21C and 21 D (sic) [the sub-plots] lawfully exist in the eyes of the law and whether the Plaintiffs have acquired any lawful entitlement thereto or otherwise; whether the 2<sup>nd</sup> Defendant's Certificate of Title was acquired irregularly, illegally and/or fraudulently or otherwise; and what reliefs, if any, ought to issue.
171. Regarding the first issue, namely; whether the 5<sup>th</sup> Defendant accrued and/or acquired any lawful rights in respect of (sic) Plot No. 21 Kahawa West Phase II or otherwise and whether the 5<sup>th</sup> Defendant had any title to convey to the Plaintiffs, if at all, it is imperative to recall and reiterate that the 5<sup>th</sup> Defendant is the one who (sic) sub-divided Plot No. 21 Kahawa West Phase II and thereafter (sic) sold the resultant sub-plots to and in favour of the Plaintiffs.
172. Arising from the foregoing, it is therefore important to investigate and interrogate whether the 5<sup>th</sup> Defendant, who is a key player in the transactions underpinning the subject suit accrued and/or acquired any lawful rights and/or interests in respect of Plot No. 21 Kahawa West Phase II, or otherwise.
173. To start with, it was the evidence of the 5<sup>th</sup> Defendant that same bought and/or purchased Plot No. 21 Kahawa West Phase II from Peach Investment Services Limited on the basis of a Letter of Allotment dated 15<sup>th</sup> September 1998. In particular, the 5<sup>th</sup> Defendant contended that at the time when same entered into the sale agreement with Peach Investment Services Limited towards and in respect of purchasing Plot No. 21 Kahawa West Phase II, Peach Investment Services Limited had not acquired any certificate of title or at all. For coherence, the 5<sup>th</sup> Defendant averred that the vendor [Peach Investment Services Ltd] only had a letter of allotment which was thereafter transferred to the 5<sup>th</sup> Defendant.
174. To put the 5<sup>th</sup> Defendant's evidence into context, it is imperative to reproduce the salient aspects of his testimony. Suffice it to state, that the 5<sup>th</sup> Defendant testified as DW4.
175. While under cross-examination by learned counsel for the 2<sup>nd</sup> Defendant, DW4 stated thus:

I confirm that I bought the land without a certificate of title. I do confirm that I was not issued with a separate letter of allotment. I only have the sale agreement and a copy of the letter of allotment that was handed over to me upon purchase. I have availed a copy of the letter of allotment that bears the name of Peach Investment.



176. Furthermore, DW4 ventured forward and stated thus:

I do confirm that the endorsement at the front of the letter of allotment does not bear any signature thereto. In particular, the endorsement was not countersigned. The endorsement does not contain the name of the officer who made the endorsement.

177. From the testimony of the 5<sup>th</sup> Defendant [DW4], what becomes apparent is that the 5<sup>th</sup> Defendant was actually purchasing a letter of allotment which had not matured into a certificate of title. The question that does arise is whether Peach Investment Services, who were selling (sic) the letter of allotment dated 15<sup>th</sup> September 1998 had any lawful rights capable of being sold.

178. Certainly, it is common ground that the bearer of a letter of allotment accrues no lawful rights and/or title capable of being sold.

179. Flowing from the foregoing and by parity of reasoning, it then means that the 5<sup>th</sup> Defendant who purported to purchase (sic) Plot No. 21 Kahawa West Phase II on the basis of a letter of allotment accrued no rights. In this regard, the doctrine of *nemo dat quod non habet* comes into play and becomes relevant.

180. Back to the question as to whether a letter of allotment can confer any legal rights and/or title to the bearer thereof. To my mind, a letter of allotment merely constitutes an offer by the government to the designated allottee inviting the allottee to confirm acceptance and thereafter comply with the terms and conditions thereunder. Furthermore, the bearer of a letter of allotment can only stake a claim to ownership rights, if at all, upon complying with the terms of the letter of allotment and upon [sic] the ultimate issuance of the certificate of title or lease, whichever is applicable.

181. In the case of *Wreck Motor Enterprises v Commissioner of Lands & 3 others* [1997] eKLR where the Court of Appeal stated thus:

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.

182. Whether a letter of allotment by and of itself can confer title capable of being alienated or otherwise has also been addressed by the Supreme Court of Kenya [the apex court]. In the case of *Torino Enterprises Limited v Attorney General* [2023] KESC 79 (KLR) the court stated thus:

57. The respondent also challenged the letter of allotment on grounds that at the time of its transfer, the conditional thirty (30) days acceptance period had lapsed. As it turned out, the letter was also silent on whose behalf the commissioner of lands had made the allotment. Noting that the Commissioner of Lands by an allotment letter dated December 19, 1999 purported to allocate the suit property to Renton Company Limited. Thereafter, by a letter dated April 25, 2001, Renton Company Limited sought approval from the Commissioner of Lands to transfer the same to the appellant. The appellant's ownership is traced back to this allotment Letter even if subsequently registered under the Registration of Titles Act cap 281 (Repealed) on April 26, 2001.

58. So, can an allotment letter pass good title? It is settled law that an allotment letter is incapable of conferring interest in land, being nothing more than an offer, awaiting the fulfilment of conditions stipulated therein. In Dr



Joseph NK Arap Ng'ok v Justice Moijo Ole Keiyua & 4 others [CA 60/1997](#) [unreported]; and in Gladys Wanjiru Ngacha v Teresa Chepsaat & 4 others HC Civil Case No 182 of 1992; [2008] eKLR, the superior courts restated this principle as follows:

“It has been held severally that a letter of allotment per se is nothing but an invitation to treat. It does not constitute a contract between the offerer and the offeree and does not confer an interest in land at all” [Emphasis added].

59. The pronouncement in Gladys Wanjiru and Dr Joseph NK Arap Ng'ok (supra) has been echoed in various Environment and Land Court decisions post the 2010 Constitution, including; Lilian Wanjeri Njatha v Sabina Wanjiru Kuguru & another, Environment and Land Case No 471 of 2010; [2022] eKLR; John Elias Kirimi v Martin Maina Nderitu & 4 others, Environment and Land Suit No 320 of 2011; [2021] eKLR; and Kadzoyo Chombo Mwero v Ahmed Muhammed Osman & 11 others, Environment and Land Case No 42 of 2021; [2021] eKLR, to mention but a few.
60. Suffice it to say that an Allottee, in whose name the allotment letter is issued, must perfect the same by fulfilling the conditions therein. These conditions include but are not limited to, the payment of a stand premium and ground rent within prescribed timelines. But even after the perfection of an allotment letter through the fulfillment of the conditions stipulated therein, an allottee cannot pass valid title to a third party unless and until he acquires title to the land through registration under the applicable law. It is the act of registration that confers a transferable title to the registered proprietor, and not the possession of an allotment letter. In Peter Wariire Kanyiri v Chrispus Washumbe & 2 others, Environment and Land Court Case No 603 of 2017; [2022] eKLR, Kemei, J held as follows:

“[15]. In the case at hand, in the absence of any title registered in the name of the plaintiff, the court is unable to hold that the plaintiff is the registered proprietor of the land. This is because the letter of allotment lapsed within 30 days and the same is of no legal consequences” [Emphasis added].
61. While we agree with the general tenor of the learned Judge's foregoing pronouncement, we remain uncomfortable with his inference that the allotment letter was of no legal consequence solely because it had lapsed after 30 days. We must reiterate the fact that an allotment letter in and by itself, is incapable of conferring a transferable title to an allottee. Put differently, the holder of an allotment letter is incapable of transferring or passing valid title to a third party on the basis of the allotment letter unless and until he becomes the registered proprietor of the land consequent upon the perfection of the Allotment Letter. It matters not therefore that the allotment letter has not lapsed.
62. Back to the facts of this case, the allotment letter issued to Renton Company Limited was subject to payment of stand premium of Kshs 2,400,000.00, annual rent of Kshs 480,000.00 amongst others. Moreover, the letter was granted on condition that Renton Company Limited would accept it within



thirty (30) days from the date of the offer, failure to which it would be considered to have lapsed.

183. Arising from the foregoing, there is no gainsaying that the 5<sup>th</sup> Defendant who purportedly purchased Plot No. 21 Kahawa West Phase II did not acquire and/or accrue any lawful rights and/or title thereto.
184. To the extent that the 5<sup>th</sup> Defendant did not acquire and/or accrue any lawful title to and in respect of (sic) Plot No. 21 Kahawa West Phase II, it then means that the 5<sup>th</sup> Defendant had no title capable of being conveyed to and in favour of (sic) the Plaintiffs or otherwise.
185. Elsewhere herein before I have referenced the doctrine of *nemo dat quod non habet*. The import and tenor of the said doctrine was expounded by the Court of Appeal in the case of *Diamond Trust Bank Kenya Ltd v Said Hamad Shamisi & 2 others* [2015] eKLR. For coherence, the court stated thus:

Firstly, section 26 (1) and (2) are exceptions to the general rule in the sale of goods that a person who does not have title to goods cannot, without the owner's authority or consent, sell and confer a better title in the goods than he has. (*Nemo dat quod non habet*). These exceptions are examples of initiatives towards the protection of commercial transactions that Lord Denning famously referred to in *BISHOPSGATE MOTOR FINANCE CORPORATION LTD V. TRANSPORT BRAKES LTD* (1949) 1 KB 322, at pp. 336-337 when he stated:

“In the development of our law, two principles have striven for mastery. The first is for the protection of property: no one can give a better title than he himself possesses. The second is for the protection of commercial transactions: the person who takes in good faith and for value without notice should get a good title. The first principle has held sway for a long time, but it has been modified by the common law itself and by statute so as to meet the needs of our own times.”

186. Similarly, the Court of Appeal in the case of *Arthi Highway Developers Limited v West End Butchery Limited & 6 others* [2015] eKLR also espoused the doctrine of *nemo dat quod non habet*.
187. In particular, the court stated as hereunder:

69. It is our finding that as between West End and Arthi, no valid Title passed and the one exhibited by Arthi before the trial court was an irredeemable fake. It follows that Arthi had no Title to pass to subsequent purchasers, and therefore KMAH, Yamin and Gachoni cannot purport to have purchased the disputed land or portions thereof.

188. Moreover, there is yet another perspective that also merits mention and a short discussion. The perspective herein emanates from the evidence of PW3.
189. According to PW3, the letter of allotment which was ultimately sold to and in favour of the 5<sup>th</sup> Defendant by M/S Peach Investment Services Limited had previously been issued in favour of one Mercy Mugo. It was the further testimony of PW3 that Mercy Mugo is the one who sold the letter of allotment to Peach Investment Services Limited. Nevertheless, it was posited that by the time Mercy Mugo was purporting to sell the letter of allotment to Peach Investment Services Limited, the timelines stipulated in the body of the letter of allotment had long lapsed.
190. Additionally, PW2 also adverted to the same issue. For ease of appreciation, it is imperative to reproduce the testimony of PW2 while under cross-examination by learned counsel for the 1<sup>st</sup> Defendant.



191. PW2 stated as hereunder:

I have availed a copy of the letter of allotment dated 15<sup>th</sup> September 1998. The letter of allotment has some endorsements on the face thereof. The letter of allotment was first issued to Fransisca Mwendwa and Solomon Mwendwa. The letter of allotment shows the original allottees. The letter of allotment had special conditions. The conditions were duly complied with. The payment was to be made within thirty days of the date of allotment.

192. While still under cross-examination by learned counsel for the 1<sup>st</sup> Defendant, PW2 stated thus:

I have not availed any evidence to show compliance with the terms of the letter of allotment. Referred to exhibit 3 and the witness states that the document is dated 6<sup>th</sup> October 2020. The date shown on the exhibit no. 3 is well outside the 30 days period. I do confirm that the letter of allotment had lapsed. I do confirm that the letter of allotment had ceased to exist.

193. The letter of allotment which is being referenced by PW2 and which PW2 confirms to have ceased to exist is the one that was ultimately passed over to the 5<sup>th</sup> Defendant and which was thereafter deployed to sell the resultant (sic) sub-divisions to the Plaintiffs.

194. Surely, if the letter of allotment had ceased to exist on the basis of non-compliance [failure to comply] with the special terms thereof, then the question is whether there was anything that remained at the foot of the impugned letter of allotment capable of being [sic] transferred to the 5<sup>th</sup> Defendant, or at all.

195. The answer to the question in the preceding paragraph is discernible in the decision in the case of Syedna Mohammed Burhannuddin Saheb & 2 Others v Benja Properties Ltd & 2 Others [2007] KEHC 292 (KLR) where the court stated as hereunder:

I do not accept Mr. Kirundi, Counsel for Defendant's argument, that the expired letter, when acted upon, had been "revived" through conduct. The letter had expired. It was dead. There was nothing to "revive".

196. Additionally, the Court of Appeal in the case of Waterfront Holdings Limited v Kandie & 2 others [2023] KECA 1223 (KLR) has also had an occasion to consider whether a letter of allotment whose terms have lapsed can be acted upon or otherwise. For coherence, the Court of Appeal stated thus:

56. We must, however, point out, based on the case of M'Ikiara M'Rinkanya and Another v Gilbert Kabeere M'Mbijiwe [1982 – 1988] 1 KAR 196, that where the allotment lapses due to the failure by the allottee to meet the conditions in the letter of allotment, the subsequent re-allotment, to be properly valid, must follow the prescribed process of allotment of land and the failure to do so would lead to the resulting title being cancelled as well.

197. The fact that the timelines stipulated in the letter of allotment which underpins the 5<sup>th</sup> Defendant's claim to Plot No. 21 Kahawa West Phase II were not complied with is also discernible from the testimony of Benson Ndegwa Gichuhi [DW3].

198. For ease of appreciation, DW3 stated as hereunder while under cross-examination by learned counsel for the 1<sup>st</sup> Defendant:

I do wish to state that the plot in question is in Kahawa West Phase II. I do confirm that the plot herein was allocated to Mercy Mugo. I have availed a copy of the letter of allotment before the court. Referred to paragraph 3 of the witness statement and the witness states



that the land/plot was transferred to Peach Investment Services. The letter of allotment was thereafter transferred to the subsequent owners.

I do wish to state that the letter of allotment is the one that was transferred to Peach.

199. While still under cross-examination, DW3 stated thus:

The transfers are duly indicated on the face of the letter of allotment. I do confirm that the conditions at the foot of the letter of allotment were complied with. I do state that the allottee issued a letter of acceptance. I don't have any letter of acceptance before the court. The letter of allotment shows what was to be paid. I do wish to state that the letter of allotment to Mercy Mugo was made in the year 1992. I do wish to state that the payments were made well outside the thirty days. However, I do wish to add that the payments were made in the year 2005.

200. Irrespective of whichever angle one looks at the matter, there is no gainsaying that the letter of allotment which ultimately passed over to the 5<sup>th</sup> Defendant and which was deployed to undertake the impugned sub-divisions was long dead. Same was therefore incapable of birthing any rights in favour of the 5<sup>th</sup> Defendant and by the extension anyone claiming thereunder, the Plaintiffs not excepted.

201. Next is the issue of whether Plot Nos. 21A, 21B, 21C and 21 D (sic) [the sub-plots] lawfully exist in the eyes of the law and whether the Plaintiffs have acquired any lawful entitlement thereto or otherwise. The 5<sup>th</sup> Defendant testified that upon purchasing Plot No. 21 Kahawa West Phase II on the basis of the letter of allotment dated 15<sup>th</sup> September 1998, same proceeded to and sub-divided the plot into four portions. In particular, the 5<sup>th</sup> Defendant contended that same sub-divided the plot into sub-plots namely 21A, 21B, 21C and 21D, respectively.

202. It was the further testimony of the 5<sup>th</sup> Defendant that upon the subdivision of Plot No. 21 Kahawa West Phase II, same sold the resultant sub-divisions to the Plaintiffs herein. For good measure, the Plaintiffs are staking a claim to ownership of the resultant sub-divisions.

203. Arising from the foregoing, it is therefore important to discern whether the sub-plots which are being claimed by the Plaintiffs lawfully exist or otherwise. Suffice it to state that no sub-division of a plot located within the jurisdiction of any local authority [read county government] can be undertaken without the preparation of the requisite sub-division scheme. Furthermore, there is no gainsaying that the subdivision scheme, if any, must then be subjected to the requisite approval in accordance with the Physical Planning Act Cap 286 Laws of Kenya [now repealed] and the regulations made thereunder.

204. It is worthy to recall that the purported sub-division that has been referenced by the 5<sup>th</sup> Defendant is said to have taken place in the year 2008 or thereabout. [See exhibit D2 produced on behalf of the 5<sup>th</sup> Defendant, namely the Beacon Certificate].

205. The process regulating the preparation and approval of a sub-division scheme was highlighted at the foot of Section 41 of the Physical Planning Act supra. Given the significance of the said section, it is imperative to reproduce same.

206. For ease of appreciation, Section 41 supra is reproduced as hereunder:

41.

- (1) No private land within the area of authority of a local authority may be subdivided except in accordance with the requirements of a local physical development plan



approved in relation to that area under this Act and upon application made in the form prescribed in the Fourth Schedule to the local authority.

- (2) The subdivision and land use plans in relation to any private land shall be prepared by a registered physical planner and such plans shall be subject to the approval of the Director.
- (3) Where in the opinion of a local authority an application in respect of development, change of user or subdivision has important impact on contiguous land or does not conform to any conditions registered against the title deed of property, the local authority shall, at the expense of the applicant, publish the notice of the application in the Gazette or in such other manner as it deems expedient, and shall serve copies of the application on every owner or occupier of the property adjacent to the land to which the application relates and to such other persons as the local authority may deem fit.
- (4) If the local authority receives any objection to, or representation in connection with, an application made under subsection (1) the local authority shall notify the applicant of such objections or representations and shall before the application is determined by it afford the applicant an opportunity to make representations in response to such objections or representations.
- (5) A local authority may approve with or without such modifications and subject to such conditions as it may deem fit, or refuse to approve, an application made under subsection (1).
- (6) Any person aggrieved by a decision of the local authority under subsection (5) may appeal against such decision to the respective liaison committee:

Provided that if such person is aggrieved by a decision of the liaison committee he may appeal against such decision to the National Liaison Committee in writing stating the grounds of his appeal: Provided further that the appeal against a decision of the National Liaison Committee may be made to the High Court in accordance with the rules of procedure for the time being applicable to the High Court.

207. Similarly, it is also imperative to take cognisance of The Physical Planning (Subdivision) Regulations, 1998.

208. The said regulations where pertinent are reproduced as hereunder:

14. Any person who submits a plan of a scheme of subdivision of any land within the area of the local authority shall comply with the following conditions—
  - (a) a minimum of 12 copies of all plans, together with a letter of consent to subdivide from the land control board and certificate of official/postal search or any other evidence from the respective Land Registrar, shall be submitted to the local authority;
  - (b) the scale of any such plan shall be in the series of 500's for example 1:500, 1:1000, 1:1500 etc.;
  - (c) the plan shall show, correctly plotted to scale, the existing plot boundaries and their dimensions, the areas of the plot, the location, the land reference number or registered number of the plot and of such contiguous plot, the contiguous boundaries of all adjacent plots and road system (existing and approved). Lanes (pedestrian and



sanitary), and their widths. The true north shall be indicated by a pointer and the names of all existing streets shall be indicated with their widths;

- (d) the proposed scheme of subdivision, the boundaries in red and the approximate dimensions of sub-plots and the proposed means of access, road or lane system (if any) with the widths of such streets, roads or lanes clearly indicated appropriately in blue on each plan.

Other colours to be used in the subdivision plan shall be blue for surrender and yellow for demolition;

- (e) all existing buildings of any nature whatsoever, shall be correctly plotted and the relationship to the proposed boundaries of the plots or sub-plots clearly indicated;
- (f) building lines shall be shown on the plan whenever necessary;
- (g) the proposed use of each sub-plot shall be stated;
- (h) every sub-plot shall be separately numbered or lettered;
- (i) every plan shall have clearly shown on it the line of every or any right-of-way road or access or wayleaves over the plot or subplot;
- (j) all plans shall be signed by the owner or his duly authorised agent and the Physical Planning Officer preparing the plans shall sign and date the plans.

209. It is the 5<sup>th</sup> Defendant who contended that same sub-divided (sic) Plot No. 21 Kahawa West Phase II. In this regard, it was incumbent upon the 5<sup>th</sup> Defendant to place before the court evidence of an approved sub-division scheme in compliance with the provisions of Section 41 of the Physical Planning Act [now repealed] as read together with the regulations. However, there is no gainsaying that no such evidence was ever tendered and/or produced.

210. On the contrary, the 5<sup>th</sup> Defendant who testified as DW4 is on record stating thus:

I sub-divided the plot into various sub-plots. I have not produced any sub-division scheme.

211. While under cross-examination by learned counsel for the 1<sup>st</sup> Defendant, DW4 stated thus:

I do confirm that I sub-divided the plot into sub-divisions. The sub-divisions were informal in nature. I have not produced any approved sub-division scheme.

212. With the foregoing testimony, what becomes apparent is that Plot No. 21 Kahawa West Phase II was never sub-divided. To this end, the resultant sub-divisions which are being claimed by the Plaintiffs are non-existent in the eyes of the law.

213. Other than the fact that the sub-plots are non-existent in the eyes of the law, it is not lost on this court that the Plaintiffs herein could not accrue and/or acquire any lawful rights to (sic) Plot No. 21 Kahawa West Phase II or any sub-division thereof on the basis of the doctrine of *nemo dat quod non habet*.

214. Finally, it is also important to underscore that the purported subdivisions which are being claimed by the Plaintiffs were birthed out of an illegality. In this regard, it is common ground that no amount of legal ingenuity would confer legality to what is being claimed by the Plaintiffs and the 5<sup>th</sup> Defendant.



215. The dicta in the case of *Macfoy vs. United Africa Co. Ltd* [1961] 3 All E.R. 1169 is succinct and apt. For coherence, Lord Denning MR while delivering the opinion of the Privy Council at page 1172 (1) stated as hereunder:

“If an act is void, then it is in law a nullity. It is not only bad, but incurably bad. There is no need for an order of the Court to set it aside. It is automatically null and void without more ado, though it is sometimes convenient to have the Court declare it to be so. And every proceeding which is founded on it is also bad and incurably bad. You cannot put something on nothing and expect it to stay there. It will collapse.”

216. Regarding the third issue, namely, whether the 2nd Defendant’s Certificate of Title was acquired irregularly, illegally and/or fraudulently or otherwise, it is imperative to state that both the Plaintiffs; 4<sup>th</sup> and the 5<sup>th</sup> Defendant[s] have contended that the 2<sup>nd</sup> Defendant’s certificate of title was procured irregularly, illegally and/or fraudulently. Furthermore, it has been contended that in so far as the 2<sup>nd</sup> Defendant’s title was illegally acquired, same therefore ought to be revoked and/or nullified.

217. Even though the Plaintiffs; 4<sup>th</sup> Defendant and the 5<sup>th</sup> Defendant have contended that the 2<sup>nd</sup> Defendant’s certificate of title was procured irregularly, illegally and/or fraudulently, it is worthy to recall that neither of the parties who have highlighted the foregoing allegations pleaded irregularity, illegality or fraud whatsoever.

218. The question that does arise is whether it can lie in the mouth of the Plaintiffs and (sic) the 4<sup>th</sup> and 5<sup>th</sup> Defendants to make submissions which are at variance with the pleadings. The answer is certainly in the negative. [See *Daniel Toroitich Arap Moi v Mwangi Stephen Muriithi & another* [2014] KECA 642 (KLR)].

219. The law as pertains to fraud is now well settled. Whosoever seeks to canvass the plea of fraud is called upon to plead and particularise fraud before same can tender evidence. Absent pleadings, any evidence purporting to espouse fraud is propagated in vacuum.

220. In the case of *Arthi Highway Developers Limited v West End Butchery Limited & 6 others* [2015] eKLR the Court of Appeal stated as hereunder:

52. According to Black’s Law Dictionary,

“Fraud consists of some deceitful practice or willful device, resorted to with intent to deprive another of his right, or in some manner to do him an injury. As distinguished from negligence, it is always positive, intentional. As applied to contracts, it is the cause of an error bearing on a material part of the contract, created or continued by artifice, with design to obtain some unjust advantage to the one party, or to cause an inconvenience or loss to the other.

Fraud, in the sense of a court of equity, properly includes all acts, omissions, and concealments which involve a breach of legal or equitable duty, trust, or confidence justly reposed, and are injurious to another, or by which an undue and unconscientious advantage is taken of another”.

Section 2 of RTA also defines “Fraud” as follows:

“Fraud” shall on the part of a person obtaining registration include a proved knowledge of the existence of an unregistered interest on the part of some other person, whose interest he knowingly and wrongfully defeats by that registration.”



53. It is common ground that fraud is a serious accusation which procedurally has to be pleaded and proved to a standard above a balance of probabilities but not beyond reasonable doubt. One of the authorities produced before us has this passage from Bullen & Leake & Jacobs, Precedent of pleadings 13<sup>th</sup> Edition at page 427:

“Where fraud is intended to be charged, there must be a clear and distinct allegation of fraud upon the pleadings, and though it is not necessary that the word fraud should be used, the facts must be so stated as to show distinctly that fraud is charged (Wallingford v Mutual Society (1880) 5 App. Cas. 685 at 697, 701, 709, Garden Neptune V Occident [1989] 1 Lloyd’s Rep. 305, 308).

The statement of claim must contain precise and full allegations of facts and circumstances leading to the reasonable inference that the fraud was the cause of the loss complained of (see Lawrence V Lord Norreys (1880) 15 App. Cas. 210 at 221). It is not allowable to leave fraud to be inferred from the facts pleaded and accordingly, fraudulent conduct must be distinctly alleged and as distinctly proved ([Davy V Garrett (1878) 7 ch.D. 473 at 489). “General allegations, however strong may be the words in which they are stated, are insufficient to amount to an averment of fraud of which any court ought to take notice”.

See Insurance Company of East Africa vs. The Attorney General & 3 Others Hccc 135/1998.

Whether there was fraud is, however, a matter of evidence.

221. Furthermore, the standard of proof attendant to fraud was discussed and elaborated upon in the case of Kuria Kiarie & 2 others v Sammy Magera [2018] KECA 467 (KLR), where the Court of Appeal 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.”



222. To my mind, the Plaintiffs; the 4<sup>th</sup> and 5<sup>th</sup> Defendants neither pleaded nor proved fraud. For good measure, it was not enough for the Plaintiffs, the 4<sup>th</sup> and 5<sup>th</sup> Defendants to just throw onto the face of the court generalised allegations devoid of any factual underpinning.
223. Next is the issue on what reliefs, if any, ought to issue. It is instructive to recall that the Plaintiffs herein sought a plethora of reliefs. Firstly, the Plaintiffs sought an order of permanent injunction to bar and/or prohibit the Defendants and in particular the 1<sup>st</sup> and 2<sup>nd</sup> Defendants from (sic) interfering with the Plaintiffs rights to and in respect of the suit plots [sub-divisions].
224. Nevertheless, while discussing issue number two elsewhere herein before, this court has found and held that the Plaintiffs plots [sub-divisions] are non-existent in the eyes of the law. Furthermore, the court also found that the Plaintiffs did not accrue any rights and/or interests capable of protection under the law.
225. To my mind, the Plaintiffs herein have neither established nor proven a basis to warrant the grant of an order of permanent injunction, or at all. [See the holding in the case of Kenya Power & Lighting Co. Limited v Sheriff Molana Habib [2018] KEHC 5027 (KLR)].
226. Next is the prayer for declaration that the Plaintiffs are the rightful and beneficial owners of the suit plots. There is no gainsaying that the suit plots [sub-divisions] which underpin the prayer for declaration are non-existent. Quite clearly a declaratory order cannot issue in vacuum and for the mere asking of the Plaintiffs.
227. The next prayer that has been sought by the Plaintiffs relates to the cancellation and/or revocation of the certificate of title in respect of L.R No. Nairobi Block 132/244 in the name of the 2<sup>nd</sup> Defendant. Be that as it may, this court has since found and held that no basis has been laid to warrant the revocation and/or cancellation of the said certificate of title. For good measure, the Plaintiffs' Amended Plaint did not canvass and/or espouse any plea of fraud, irregularity and/or illegality.
228. Moreover, the Plaintiffs have also sought a declaration that the charge registered in respect of L.R No. Nairobi Block 132/244 is a nullity and void. Nevertheless, I have since found and held that the 2<sup>nd</sup> Defendant acquired lawful title to the said property. In any event, the 2<sup>nd</sup> Defendant's title has neither been challenged and/or impugned whatsoever. Furthermore, it is not enough to contend without any evidence that the 2<sup>nd</sup> Defendant's certificate of title is being investigated by the Directorate of Criminal Investigations and the County Government of Nairobi.
229. Sadly, the evidence tendered by DW3 which adverted to the purported investigations by the DCI and the County Government of Nairobi were made without substantiation.
230. The other prayer that has been sought by the Plaintiffs touches on an order directing the Chief Land Registrar to process and issue title deeds to the Plaintiffs. I must say that the prayer in question is premised on fertile imagination and wishful thinking. I say this because, for one to be issued with a certificate of title, one must have a valid letter of allotment, comply with the terms thereof within the stipulated timelines, procure the lease instrument and thereafter submit same for registration in the manner prescribed under the law.
231. In respect of the instant matter, there is no gainsaying that the Plaintiffs herein had neither accrued nor been issued with any valid letter of allotment. Absent a letter of allotment, can the Plaintiffs procure certificate of titles? I am afraid that the prayer as pertains to processing and issuance of certificates of title is illusory.



232. Next is the prayer for declaration that the Plaintiffs' proprietary rights have been violated and damages do issue. To begin with, proprietary rights must be acquired before same can be protected under the law. In respect of the instant matter the Plaintiffs did not accrue any. None can therefore be violated. In addition, non can be protected. [See *Nelson Kazungu Chai & 9 others v Pwani University College* [2017] KECA 135 (KLR)].
233. Finally, the Plaintiffs have sought an alternative prayer, namely, compensation for the developments made on the suit property. I beg to address the prayer herein in a two-pronged manner. Firstly, it is not lost on this court that the prayer in question adverts to a claim for liquidated/special damages.
234. To the extent that the prayer touches on and concerns liquidated/special damages, it is common ground that the Plaintiffs were obligated to particularly plead the claim and thereafter strictly/specifically prove. However, there is no gainsaying that the Plaintiffs did not comply with the peremptory requirements as pertains to pleadings. [See *Superior Homes (Kenya) PLC v Water Resources Authority & 9 others* [2024] KECA 1102 (KLR)].
235. The second perspective turns on the question as to whether the valuation report that was tendered and produced by PW1 can be used to underpin an award for compensation. It is not lost on this court that the valuation report [exhibit P24] is evidence which does not go towards a pleaded issue. Such evidence constitutes departure and thus violates the provisions of Order 2 Rule 6 of the Civil Procedure Rules 2010.
236. Moreover, it is not lost on the court that the alternative prayer is canvassed in an omnibus manner. For good measure, the Plaintiffs have not specified who of the Defendants is chargeable with the compensation sought. To my mind, the Plaintiffs seem to have left the question of determining who is chargeable with the compensation to the election of the court.
237. I am afraid, in the practise of law and in particular, in litigation courts are not granted a window to address any other business [AOB]. The parties must stand or fall with their pleadings.
238. Other than the Plaintiffs, it is worthy to recall that the 2<sup>nd</sup> Defendant also impleaded a Counterclaim. While discussing issue number three [3], I found and held that the 2<sup>nd</sup> Defendant's certificate of title was neither procured nor obtained vide fraud.
239. On the contrary, I found and held that the 2<sup>nd</sup> Defendant's certificate of title was lawful. To this end, the 2<sup>nd</sup> Defendant is entitled to partake of and benefit from the statutory privileges attendant to the provisions of Sections 24 and 25 of the [Land Registration Act](#) 2012.
240. Moreover, it is also worthy to take cognisance of the decision in the case of *Waas Enterprises Limited v City Council of Nairobi & another* [2014] KEELC 605 (KLR) where the court stated as hereunder:

As a registered proprietor, the plaintiff is entitled to enjoy all proprietary rights to the exclusion of all others. This includes the right to exclusive possession of the suit land. The rights of a proprietor of land are set out in Sections 24 and 25 of the [Land Registration Act](#) which provide as follows:

“24. Subject to this Act—

- (a) the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto; and



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

25.

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

It therefore follows from the above that only the plaintiff is entitled to enjoy proprietary rights over the suit land. The 2<sup>nd</sup> defendant had no right to the suit land. She must therefore vacate the suit land and hand over possession to the plaintiff.

241. From the foregoing, it is evident that the Counterclaim is meritorious.

**Final Disposition:**

242. Flowing from the foregoing analysis, it must have become crystal clear that the Plaintiffs herein have failed to prove their claim to the requisite standard. In this regard, the Plaintiffs’ suit is bereft of merits.

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

- i. The Plaintiffs’ suit be and is hereby dismissed.
- ii. Costs of the suit be and are hereby awarded to the 1<sup>st</sup> and 2<sup>nd</sup> Defendants only.
- iii. The 2<sup>nd</sup> Defendant’s Counterclaim be and is hereby allowed as hereunder:
  - a. The Plaintiffs be and are hereby ordered to vacate and handover vacant possession of Title Number Nairobi Block 132/244 within 120 days.
  - b. In default to vacate and hand over vacant possession in terms of clause (a), the 2<sup>nd</sup> Defendant shall be at liberty to levy eviction and in this regard an eviction order shall issue.
  - c. In the event of levying eviction in terms of clause (b), the costs/expenses if any, shall be certified by the Deputy Registrar and borne by the Plaintiffs.



d. Costs of the Counterclaim be and are hereby awarded to the 2<sup>nd</sup> Defendant and same shall be borne by the Plaintiffs.

iv. Any other relief not expressly granted is hereby declined.

244. It is so ordered.

**DATED SIGNED AND DELIVERED AT NAIROBI ON THE 23<sup>RD</sup> DAY OF APRIL, 2025.**

**OGUTTU MBOYA, FCIArb**

**JUDGE.**

In the presence of:

Benson – Court Assistant

Mr. Odhiambo h/b for Mr. Wesonga for the Plaintiffs

Ms. Lilian Opondo for the 1<sup>st</sup> Defendant

Mr. Kagunda for the 2<sup>nd</sup> Defendant

Mr. Mwambonu for the 3<sup>rd</sup> Defendant

Mr. Sonoia for the 4<sup>th</sup> Defendant

Mr. Ndumu Kimani for the 5<sup>th</sup> Defendant.

