



**Ngarama v Kinyanjui & another (Environment & Land Case
215 of 2015) [2022] KEELC 3067 (KLR) (26 May 2022) (Judgment)**

Neutral citation: [2022] KEELC 3067 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE 215 OF 2015**

FM NJOROGE, J

MAY 26, 2022

BETWEEN

JOSEPH NJENGA NGARAMA PLAINTIFF

AND

OLIVE WAMUHU KINYANJUI 1ST DEFENDANT

COUNTY GOVERNMENT OF NAKURU 2ND DEFENDANT

JUDGMENT

1. By a plaint dated 27/07/2015 and filed in court on 28/07/2015 the plaintiff sought the following orders against the defendants:
 - a. A declaration the plaintiff is the lawful and rightful owner of the parcel of land known as Naivasha Municipality Block 8/56 (formerly unsurveyed commercial plot Naivasha Town) measuring approximately 0.9 ha situate in Naivasha Town, Naivasha Sub-County, Nakuru County to the exclusion of the 1st defendant and all other persons.
 - b. A permanent injunction restraining the defendants by themselves, their agents, servants, employees and/or persons claiming under or in trust for them, from entering into, remaining upon, fencing, selling, disposing, alienating, accumulating building or other materials, digging a dam or water reservoir, constructing permanent or temporary structures upon, or otherwise committing acts of waste, equitable or otherwise, or in any manner howsoever interfering the plaintiff's quiet use, possession and enjoyment of the parcel of land known as Naivasha Municipality Block 8/56 (formerly unsurveyed commercial plot Naivasha Town) measuring approximately 0.9 Ha situate in Naivasha Town, Naivasha Sub-County, Nakuru County.
 - c. The costs of this suit.
 - d. Any other or further relief as this honorable court may deem fit to grant.



The Plaintiff's Case

2. The Plaintiff averred that he is the legal and beneficial owner of land parcel No. Naivasha Municipality Block 8/56 (formerly Unsurveyed Commercial Plot Naivasha Town) situated in Naivasha Sub-County in Nakuru County; that he developed a semi-permanent building and put up an electric fence with the knowledge of the 2nd defendant and in the plain sight of the 1st defendant; that on 22/07/2015 or thereabouts, the plaintiff was informed of the defendants' intention to enter the suit property and remove his developments and put the 1st defendant in possession; that the intended actions would be wrongful and would deny him the rights of possession and ought to be stopped.

The 1st defendant's Defence

3. The 1st defendant filed her defence dated 12/08/2015. She denied that the plaintiff is the legal and beneficial owner of land parcel No. Naivasha Municipality Block 8/56 (formerly Unsurveyed Commercial Plot Naivasha Town). She also stated that land parcel No. Naivasha Municipality Block 8/56 does not exist in any records at the Ministry of Lands.
4. She averred that contrary to the alleged particulars of property as contained in the Plaint, the disputed property is land parcel number Naivasha Municipality Block 8/97 which is registered in the name of the 1st Defendant. She also averred that sometime in the year 2006, she stopped one Samson G. Gachuhi from trespassing onto the suit property but in the said Samson forcefully gained access to the suit property and put up a temporary structure and a barbed wire fence. She alleges that the plaintiff is a pawn for the real claimant who is Samson G. Gachuhi.
5. She denied all the other allegations in the Plaint and prayed that the Plaintiff's suit be dismissed with costs.

The 2nd Defendant's statement of Defence

6. The 2nd defendant filed its statement of Defence dated 27/10/2015 on 05/11/2015 and averred that if there are any developments by the plaintiff, they were unlawful as he did not seek for approval from the 2nd Defendant. It also averred that the 1st Defendant submitted a copy of the registered lease under her name and also a certificate of Lease seeking fencing development plan approval and that current records at the Land's Registry show that the 1st Defendant is the legal owner of the suit property. The 2nd Defendant then denied all the other allegations in the Plaint.

The Plaintiff's Evidence

7. The Plaintiff gave his evidence on 9/03/2018 as PW1. He stated that he is a retired Pastor and now a businessman. It was his evidence that he learnt that his land parcel No. Naivasha Municipality Block 8/56 was on the verge of being taken by someone. He testified that he together with four other Pastors had applied for a plot through a letter addressed to the late former president Daniel Arap Moi; that he received a letter of allotment dated 27/10/1994 Ref 19447/XX1 with a part development plan that described the plot as unsurveyed Commercial Plot Naivasha Town measuring approximately 0.9 Ha.
8. It was his evidence that the features that identified the plot on the ground included a power line and drainage. He testified further that the plot is in Naivasha to the left of Nairobi Highway facing Nairobi, past the road leading to Kinangop.
9. It was his evidence that the letter required him to pay Kshs. 79,600/= and so he appointed a surveyor, one Samson G. Gachuhi, to survey the property and follow up on the title deed. That he did the survey



- and was required to pay to the Municipal Council Ksh. 19, 410/= which he paid vide receipts produced as P. Exh 2(B) and 2(B).
10. The Plaintiff Produced the rate demand note and receipt for Ksh. 15,000/= dated 24th March as P. Exh 2A and 2B respectively. The surveyor sought approval for the Plaintiff to put up a structure and a toilet on the plot through the letter dated 23/07/2010 and was given a letter of approval dated 12/08/2010 which he produced as P. Exh 3A and 3B. It was his evidence that in addition to the iron sheet structure and the toilet, he deposited a container on the plot and installed an electric fence.
 11. He went on to testify that he had photographs in his possession that show the fence, container, iron sheet structure and toilet and the 1st Defendant's perimeter wall which photographs were marked as PMFI 4A, 4B, 4C and 4D respectively.
 12. He also testified that he was not issued with a title deed as the file at Ardhi House got lost, which information he was given by the surveyor. That by the time the file was traced, there was another person processing a title on the file who he was informed was the 1st Defendant herein. It was his evidence that she asked people to demolish her structures but his neighbors stopped her. He sent a demand letter dated 24/07/2015 through the firm of P. K Njuguna & Co. advocates before coming to court.
 13. On cross-examination by Mr Ndubi, he confirmed that the plot he is claiming is Naivasha Municipality Block 8/56 but he does not have a title to the plot. He also confirmed that the 1st Defendant has a title and he was shown a Certificate of Lease for land parcel no. Naivasha Municipality Block 8/97 which is approximately 2.4720 Ha.
 14. Upon being referred to PMFI1, (his letter of allotment) he admitted that it refers to unsurveyed commercial plot which did not state the plot number and that it gave dimensions as 0.9 Ha. He also admitted that paragraph 2 of that letter asked him to pay Ksh. 79, 600 within thirty (30) days which he didn't pay.
 15. He also admitted that the attached part development plan looked more recent and new compared to the paper on the allotment letter and that his names are printed on the paper but the address appears to be printed by two different machines. He confirmed that he paid the surveyor in the year 2015 and that the rates demand note produced as P. Exh 2A was sent to Samson Gachuhi of P. O Box 753 Naivasha; that according to the records at the Municipal Council, the rates payer was Mr. Gachuhi and the approval was given to him. He was referred to his statement at paragraph 4 and stated that he was allocated a portion described as "A". He was also referred to a sketch included in his list of documents and he confirmed that on the said sketch Plot A touches the Nakuru Nairobi Highway. He stated that he was not aware that in 2006 the 1st Defendant and Samson Gachuhi had a dispute. He confirmed that there was a time the parcel file was missing at Ardhi House and that he is not aware that when it was found, there was a letter of allotment in the name of Samson G. Gachuhi. He was then referred to the third document on the 1st defendant's list of documents which is a letter of allotment in dated 27/10/1994 favor of Samson Gachuhi which turned out to be the same date as his letter of allotment save that it has a plot number while his letter of allotment does not; he stated that he was surprised that Samson Gachuhi had a letter of allotment. He was also referred to document number 8 on the 1st Defendant's list of documents which he confirmed to be a letter from the Commissioner of Lands stating that the Letter of allotment in the name of Samson Gachuhi was a forgery; he denied knowledge of the said forgery.
 16. On re-examination he restated that he was not aware that Samson Gachuhi had a letter of allotment at all or for a plot measuring 0.9 Ha. He also restated that the letter of allotment and sketch are of different types of paper but maintained that they were issued to him that way. It also turned out that



- at paragraph 4 of his statement he had stated that the portion described as “A” was later described in the letter of allotment as unsurveyed Commercial Plot Naivasha Town; that the sketch was used to describe a number of plots and that when they went to the Commissioner of Lands he found out that the sketch was different from his part development plan in his letter of allotment. He also stated that he instructed Samson Gachuhi and authorized him to use his name if necessary.
17. Samson Githura Gachuhi testified as PW2. He testified that he is a land surveyor working and residing in Naivasha; that in the year 2002, he met Joseph Njenga Ngarama, the plaintiff herein, who wanted survey services with regard to a parcel of land in Naivasha. He testified that Joseph Ngarama Njenga told him that he had been allocated a parcel of land together with five other church ministers whose land use is commercial. It was his evidence that at time he was practicing under his principal by the name Francis Munuve Kasyi and he was registered under him.
 18. He testified that the plaintiff showed him an original letter of allotment in his name dated 27/10/1994 with Ref 19447/XXI. He testified further that the plot was described as “UNS Commercial Plot Naivasha Town” which means unsurveyed commercial plot. That the area was approximately 0.9 Hectares and the allotment letter came with a part development plan.
 19. He further testified that he was instructed to survey the parcel of land and pursue a lease for the property and was paid a down payment of Kshs 100,000/= with a balance that was to be paid later; that he got Datum plans from Survey of Kenya to help him know where the plot is situate before he went to the ground and identified the plot. On the ground he found that the plot was bordered by a storm water drainage on the side and a road on the other side and had a power wayleave traversing it. It was his evidence that the neighbouring suit property was already surveyed under FR No. 364/100 for parcel number 6. That when he took measurements, he found that the area on the letter of allotment varied from the area on the ground, the latter which was 2.473 Ha and he drew a survey plan and submitted it to the Director of Survey. PW2 testified further that the map was registered as FR No. 456/172 defining the parcel number Naivasha Municipality Block 8/56 and produced it as exhibit P. Exh 6. He testified further that he forwarded the survey plan through the letter dated 6/08/2003 which he produced as exhibit P. Exh 7. It was his evidence that the letter was received on 18/08/2003 at Survey of Kenya, which department took too long to act, and later they realized that their records had disappeared and that someone was interfering with the process. It was his evidence that they wrote a letter of complaint to the Director of Survey and resubmitted the documents on 5/10/2010 which letter was produced as exhibit P. Exh 8. The work was authenticated under reference CT 67/Vol.56/85 of 6/12/2010 and the Survey of Kenya issued an authentication slip as P. Exh 9. He also testified that the authentication was indicated in the survey plan on 6/12/2010 and carried conditions such as payment of survey checking fees, a release letter to the surveyor and an indent from the Commissioner of Lands.
 20. He testified that the checking fees was paid and a release letter dated 7/02/2011 was done and produced as exhibit P. Exh 10; next, they sought authority to pay the stand premium of Ksh. 79,600/= which they did through the letter dated 27/01/2010 (P. Exh. 11) which was received the same day. He then produced as exhibit P. Exh 12 a letter written by the Ministry of Lands to the District Land Officer Nakuru on 31/08/2012 asking him to do a ground report with reference 170442/6.
 21. PW2 testified that he got to know of all these correspondences because he had been instructed to follow up on them; that land officers went on the ground and wrote a ground report dated 18/12/2012 with Ref 2402/NKU/LA/VII//2008 (P. Exh 13.) Securing the authority to pay took a while, but the ground report indicated that there was an iron sheet roof house and iron sheet walls; later after the permission to pay the stand premium was issued a cheque for payment was submitted on 7/04/2014. He produced the letter forwarding the cheque as exhibit P. Exh 14A and 14B. However, P. Exh 14B was not used to pay money to the government and so it went stale. They then forwarded another cheque



- No. 277094 on 9/06/2015 with a forwarding letter dated the same date which were produced as P. Exh 15A and 15B. He testified that the Commissioner of Lands issued a receipt No. 4052984 dated 12/06/2015 which he produced as exhibit P. Exh 16.
22. It was further his evidence that he noticed that someone was in a rush to have their documents registered in priority to their documents as there were computation records and PR which had been submitted; that FR No. 572/188 prepared by J.O. O. K. Obado had been presented to the Director of Survey on 18/03/2015 to register land parcel No. Naivasha Municipality Block 8/97 and approved on 25/03/2015; that they informed the Director of Surveys what was happening and that the FR matched the computation of the property that they had submitted. He then produced a copy of FR No. 572/188 (P. Exh 17.)
 23. PW2 further testified that they wrote a letter (P. Exh 18A) to the National Land Commission on 31/03/2015 which was received on 2/04/2015 and which was copied to the Director of Surveys who received it also on 2/04/2015. He testified that he informed his principal of the new developments, who wrote a letter to the Director of Surveys dated 18/5/2015 (P. Exh 18B) which was received on 19/05/2015 wherein several complaints were raised.
 24. It was his evidence that the Director of Surveys was amending the Registry Index Map without a survey plan to purport as though the property had been subdivided. He then produced the letter as P. Exh 19. He testified that the Director of Surveys did not take action regarding the complaint save by causing cancellation of titles Naivasha Municipality Block 120, 121, 122, 123, 124 and 125. It was further his evidence that the office of the chairman of the National Land Commission instructed a Director of Land Administration Ms. Mercy Jamweya to investigate the matter and a report dated 8/06/2015 was prepared and the subject was "Plot UNS Commercial Plot (Now Block 8/56) Naivasha." He testified that in terms of area and dimensions, parcel No 56 is the same as parcel number 97 which is claimed by the 1st defendant; that the findings of the report were that parcel no. 56 which they had surveyed was genuine and its computation book number 53827 and FR 456/172 were legally allocated to the Plaintiff; that he reported that the new record registered in the plot under computation book no. 66948 and FR 572/188 is null and void; that he could not find the allocation of an extension to Naivasha Bloc 8/3 ref. letter of allotment Ref 156/234/22 dated 18/12/1988 in his records and the report was marked as PMFI-20.
 25. It was PW2's evidence that the 1st defendant went ahead and processed a certificate of lease; that they wrote to the Sub-County Administrator a letter dated 29/05/2015 (P. Exh 21) informing them that parcel 97 was disputed since they were on the ground; that at the same time the plaintiff informed the National Land Commission that the 1st Defendant had acquired a title deed despite the National Land Commission's action.
 26. It was his further evidence that the 1st defendant's title was not properly issued and that the NLC wrote to the Land Registrar the letter dated 13/08/2015 (P. Exh 22) instructing him to register a restriction on the property as the Commission deliberated on the dispute. He testified that they sought permission to carry out development on the suit property through the letter dated 23/07/2010 which he produced as P. Exh 23 and were granted permission through the letter dated 12/08/2010 which letter was produced as P. Exh 24. According to him, the correct position on the ground is that there is a road separating parcel No. 3 and parcel No 56.
 27. He also testified that according to the Commissioner of Lands the Plaintiff was allocated 5 acres but that the allocation relating to the suit property is 0.9 hectares. PW2, upon being shown documents 1, 2, 3, 4, 5, 6 and 7 on the 1st Defendant's list of documents dated 22/06/2018, testified that parcel number Naivasha Municipality Block 8/9 (which had been allocated to the plaintiff earlier) is 2.5 acres



- and that the suit property in this matter is almost the same acreage, adding up to five acres. Parcel No 9 had been processed into a title but parcel number 56 had not hence the instant dispute. He also testified that the area indicated in the letter of allotment is always subject to the final survey and after the survey was done, the area was larger than what was indicated in the letter of allotment, that is, 2.473 Hectares; that the alleged allocation and survey in favour of the 1st defendant was not genuine because the issuing authority had written a letter stating that the records were fraudulent and null and void.
28. On cross-examination he confirmed that he had no personal interest in the suit property and that he was only instructed to survey the land; that the plaintiff pointed out to him the physical location of the property. He was referred to the plaintiff's statement dated 28/07/2019 and he stated that the Plaintiff's portion was marked as "A" which he admitted touches on the Nakuru – Nairobi highway. He also admitted that the property he surveyed did not touch the Nakuru-Nairobi highway and that the plaintiff had told him that he was given two allotment letters within the same locality.
 29. He was then referred to PMFI-1 which was the letter of allotment from the Commissioner of Land with the allottee named as "J.N. Ngarama" where he was allotted 0.9 hectares which is about 2.5 acres. He admitted that plot "A" has never been registered in his name. He was also referred to the document No. 4 of the plaintiff's list of documents filed on 28/07/2015 and admitted that it was a rates demand addressed to him. He stated that he was authorized to open a rates card for the property but he did not have the said authorization with him in court. PW2 also admitted that there is a receipt dated 24/03/2006 for Ksh. 15,000/= issued to him and another rates payment receipt dated 11/08/2010 for Ksh. 2,000/= that was addressed to him. He also admitted that all the rates payment demands in the plaintiff's bundle were in his name.
 30. He was then referred to P. Exh 23 which was a letter dated 23/07/2010 which he wrote and described himself as the owner of the suit property; he stated that he could not confirm whether the records at the Municipal Council showed that he was the owner. He also confirmed that at the bottom right corner there was a note that indicated that the suit property belonged to him. He admitted that he was given an approval based on that letter which he had produced as P. Exh 24.
 31. He said he had put up a three roomed mabati house, a pit latrine, an electric fence and a container on the suit property. He was also referred to the document appearing as number 1 on the 1st defendant's supplementary list of documents which was a letter of allotment dated 15/12/1993. The particulars reflect that the allotment was to J. N Ngarama the plaintiff herein and that the size allocated was 1.1 Ha. He admitted that item No. 4 on that list is a lease issued to the plaintiff for land parcel number Naivasha Township Block 8/9 while item no. 5 is a Certificate of Lease for the property but was not issued to the Plaintiff.
 32. He also confirmed that according to the map, plot number Naivasha Municipality Block 8/9 touches the Nairobi-Nakuru highway just at plot "A" when he was referred to item no. 7 on the 1st defendant's supplementary list. When he was referred to item no. 1 on the same list he stated that the letter of allotment gives the size of the land to be 1.1 Ha. He also admitted that the lease also gives the area as 1.1 Ha. That when he was engaged to survey the land by the Plaintiff he was given the letter of allotment dated 27/10/1994. He also admitted that the 1st defendant has a title to plot no 9 allocated to him by the Commissioner of Lands; he was not aware that the 2nd letter of allotment was a forgery.
 33. On re-examination he stated that when he was instructed the plaintiff did not know the boundaries of the suit property and that he used the Part Development Plan attached to the letter of allotment dated 27/10/1994; that the letter dated 14/07/1992 at page 1 of the Plaintiff's list of documents indicates that each of the applicants were seeking 2.0 hectares. He was also referred to item No. 1 on the 1st defendant's supplementary list of documents dated 22/06/2018 which was a letter of allotment dated 15/12/1993



- and he confirmed that the acreage was 1.1 Ha while the letter of allotment dated 27/10/1994 allocated 0.9 Ha to the Plaintiff. In his arithmetic, which is rather correct, when both sizes are put together they amount to the 2.0 hectares which the plaintiff had applied for. He reiterated that the property belongs to the plaintiff who had instructed him to work on his behalf and that is why his names appear on the documents.
34. Paul Muthike Mutwethau testified as PW3. It was his evidence that he works at the National Land Commission as Principal Land Administration Officer. He was referred to PMFI-20 (letter dated 8/06/2015) and he stated that in 2015 he was in charge of verification of letters of allotment both at the Ministry of Lands and at the NLC; that the plaintiff had then complained to the NLC through a letter dated 31/03/2015 that another survey had been done by the Director of Surveys despite his already conducted survey FR No. 456/172 (number 53827) through which he had been allocated LR No. Naivasha Municipality Block 8/56; that the new survey number that the plaintiff had complained of was FR No. 572/188.
 35. It was his evidence that after receiving that letter (PMFI-20 dated 8/06/2015,) he went to the Senior Planning Records Office where they keep all the master plans and got correspondence file number 156239 where he found an allotment letter dated 18/12/1998 issued to one Olive Wamuhu Kinyanjui over the same piece of land; that the letter of allotment had Reference No. 156234/22 which he testified that he thought was an error because it ought to have been 156239/22; that the allotment was apparently done as an extension to parcel No. Block 8/3; that he wrote a letter to the Director Of Survey because after going through their general file for Naivasha Township, he could not find the allotment letter to Olive Wamuhu; that he wrote the letter after verifying and cross-checking their records. He testified that his verification did not result in him getting any copy of the allotment letter to Olive Wamuhu in the records that they held other than the correspondence file that he had referred to; that the verification exercise revealed PMFI-1 to be genuine. He produced the letter dated 8/06/2015 as PExh-20. He also testified that the Plaintiff is the genuine allottee and according to his records survey record, FR 572/188 was null and void.
 36. On cross-examination he confirmed that he knows the plaintiff and Mr Samson G. Gachuhi. He confirmed that he came to court from Lamu where he is currently working without passing through Ardhi House to get the documents and that he is relying on the documents given to him by the Plaintiff. He also confirmed that he does not have any report on the verification exercise and that a certificate of lease has now been issued in favor of the 1st defendant. He admitted that the office of Commissioner of Lands is no longer in existence and the office with the records is the office of Director of Land Administration. He also admitted that there is a file in favor of Olive Wamuhu and that there are competing claims between the plaintiff and the 1st defendant and that as per the letter dated 31/12/2010 (document number 4) on the 1st defendant's bundle of documents, the Commissioner of Lands was asking for the survey data in respect of Naivasha Extension to Block 8/3 whose contents stated that the plot belonged to Olive W Kinyanjui.
 37. On re-examination he stated that he visited a property adjacent to the suit property with Hon. Kinyanjui the 1st defendant's husband and a Mr Osodo and saw iron sheet structures on the suit property. He also stated that the certificate of lease was issued on 8/06/2015 after he had written the letter; that despite the changes on the name in J.N. Ngarama's letter of allotment, he found it genuine since in any event during that period the Lands Office was using typewriters, and it tallied with the copy that he found in the lands office file. He also stated that he never came across the letter of allotment dated 27/10/94 issued in the name of Samson G. Gachuhi during his verification exercise and Samson has never come to the lands office claiming any land in the area.
 38. The Plaintiff's case was then closed.



The 1st Defendant's Evidence

39. Robert Simiyu testified as DW1. It was his evidence that he is the Assistant Director Land Administration from the Ministry of Lands & Housing. He testified that he had file No. 291912 for land parcel Number Naivasha Municipality Block 8/97. He testified further that according to the records he has, the property belonged to the 1st defendant who was allocated the property on 18/12/1998; that her letter of allotment was for unsurveyed Residential plot Naivasha whose size was 2.473 Ha. and that payments of Kshs. 180,460/= were made vide the receipt no. 1889151 on 26/05/2010 for the legal fee on allotment.
40. That after allocation she wrote a letter dated 28/09/2010. She indicated that she had engaged a surveyor to do a survey which was presented to the Director of Survey but was rejected on the basis that one Samson G. Gachuhi had also presented documents to the Director of Survey claiming ownership. That on 12/08/2011 the Commissioner of Lands wrote to the Director of Surveys vide Ref No. 156/239 informing him that the allotment letter in the name of Samson G. Gachuhi was a forgery and that the 1st defendant's survey should be approved.
41. He also testified that the Chief Land Registrar vide the letter ref. No CLR/A/39/Vol 8/88 dated 3/02/2015 confirmed that the 1st defendant was the genuine owner of the property. That the Director of Survey received the letter and wrote the letter reference number CT67/Vol.59/32 dated 5/05/2015 asking him to indent for the Registry Index Map; that to "indent" is to ask for an amended RIM which indicates the acreage and the plot number; that the land secretary vide his letter dated 5/05/2015 did an indent to the Director of Surveys asking for an amended Registry Index Map; that on 13/05/2015 the Director of Surveys forwarded an amended Registry Index map for Naivasha Municipality Block 8/97 vide the letter ref. no CT 67Vol.59/37; that upon receipt of the amended Registry Index Map, the Land Secretary processed a lease in favor of the 1st defendant; that after processing the lease the 1st defendant was to pay land rent of Kshs. 492,520/= before registration of the lease which was paid at KCB Naivasha; that the lease was forwarded to the District Land Registrar, Naivasha vide a letter dated 15/06/2015 which was copied to the 1st defendant asking her to appear before the Land Registrar, Naivasha to execute and collect her lease.
42. DW1 produced the letter of allotment dated 18/12/1998 as DExh. 1, the original receipt of Kshs. 180,460/= as DExh. 2, KRA payment receipt of Kshs. 492,620/= as DExh. 3, letter dated 12/08/2011 as DExh. 4, the letter dated 3/02/2015 was marked PMFI-5. Regarding the letter of allotment dated 27/10/1994 addressed to J. N. Ngarama he testified that it appears there was an erasure and addition of a name and that the plot claimed by the 1st defendant is residential and that there are special conditions attached thereto for a residential plot; that the acreage indicated on PMFI-1 is 0.9 Ha while that of the 1st defendant is 2.473Ha.; that the stand premium for the plaintiff's allotment is Kshs. 60,000/= and annual rent Kshs. 12,000/= while the stand premium for the 1st defendant is Kshs. 140,000/= and the annual rent Kshs. 28,000/=.
43. On cross-examination, he stated that the file he was using to give evidence was 291912 which was opened on 15/05/2015 and that it is not the file used to allocate property. He stated that the file used to allocate the property was 19447/XXIV and that the file that was used to receive payment was 156239. He admitted that he did not know where the file for receiving payment was. He confirmed that the land parcel has only one file which is 291912. He confirmed that the 1st defendant's letter of allotment read 2.473Ha and that upon survey the area became 2.472 Ha.; that a part development plan which was made by the Director of Physical Planning was attached to the letter of allotment. He was shown



page No. 2 of the file he had and he stated that it named files nos 19447/XXX, 291912, 170442 and 156239 and that the list was from the National Land Commission.

44. He admitted that he did not know the location of file 170442 and when he was referred to the receipt dated 12/06/2018 he also admitted that the reference at the top was 170442 which was one of the files listed under No. 30. That the list did not confirm the 1st defendant as the owner and neither did it give the plot number or the acreage. That it was indicated “deferred”. He was also shown the letter dated 31/12/2010 by S. M Osodo and stated that it was not in his file but it had reference No. 156239/35. He confirmed that it related to a residential plot and spoke of the same property. He stated that it appeared that the same property had been dealt with in different files. He also stated that the process for allocation of property begins with an application by a citizen to the Commissioner of Lands who used to allocate land, that at present the duties of the Commissioner are carried out by National Land Commission; then the SPRO which has the maps for the whole country confirms availability of the land thereafter, if it is available, valuation is done and the applicant is informed; after valuation a letter of allotment is issued. That the District Land office is also relied on to check for availability of the land.
45. He was referred to item No. 9 and 10 on the Plaintiff’s list of documents. Item 9 is a letter from the Commissioner of Lands to the District Land Officer Nakuru ref 170442/6 and dated 31/08/2012. He confirmed that it stated Un-surveyed commercial plot Block 8/56 and it sought a ground report and was addressed to J. N Ngarama. He was also referred to the letter dated 18/12/2012 by A.A Areri who replied and stated that there were developments on the site. He also confirmed that LR 8/56 and 8/97 are different and that he cannot tell whether on the ground they are the same. Upon being shown a letter dated 8/06/2015 from NLC written by P. M Mutwethau for the Director of Surveys who confirmed the allocation to J. N Ngarama, he stated that any new record under a different computation is null and void.
46. On re-examination he was referred to the letter dated 8/06/2015 and stated that he could not tell that the records were missing and that the former Commissioner of Lands office which is now the Director of Land Administration would be the one holding the records. That as at 2012 there was a letter of allotment issued in 1998.
47. Olive Wamuhu Kinyanjui testified as PW2. She adopted her witness statements dated 12/08/2015 and 22/06/2018 as her evidence and testified that land parcel No. Naivasha Municipality Block 8/97 belongs to her. She produced the certificate of lease as DExh. 6. It was her evidence that she first owned land parcel number Naivasha Municipality Block 8/3 and was issued with an allotment letter dated 18/12/1998 and made payments. Kshs. 180,460/= was the first payment. In the year 2006, she found someone had placed a container on the disputed land. That she was informed that it was Samson G. Gachuhi and that she asked him to remove the container which he did but then returned it again later; that she wrote a letter to the Commissioner of Lands dated 28/09/2010 (DExh) 7 complaining that someone was on the ground; that she was given a letter that indicated that the property belonged to her and that she wrote another letter to the Director of Surveys dated 31/10/2010 (DMFI 8) under the file reference number was 156239 and for land parcel number Naivasha Municipality Block 8/3.
48. It was further her evidence that she was given a lease (DExh 9.) She stated that in the plaint the plaintiff was claiming Block 8/56 which is 0.9 Ha which parcel of land she had no interest in. She testified that the size of her land is 2.473 Ha. She also stated that she is not claiming plot “A” as it neighbors Naivasha Municipality Block 8/3, the latter which is which land that the plaintiff had been earlier allocated land and sold to one Bartholomeo Gathuu after he was issued with a certificate of Lease. She stated that as per rates demand notice and receipt for payment of rates, it was Samson G Gachuhi who paid for the rates and that the demand notice was addressed to him; that there was also a payment request to



Samson for 19447/XXI and that the name of Joseph N. Ngarama begun to feature when Samson G Gachuhi's documents were said to be forgeries.

49. On cross-examination she confirmed that she was allocated the land in December 1998 but she did not have a copy of the application she made. She was referred to the letter of allotment which she said was for an unsurveyed residential plot Block 8/3 with a sketch plan attached to it. She also stated that her allocation letter was dated 18/12/1998 and the sketch plan 29/12/1993 which was written "for a proposed commercial plot." She also observed that DExh-1 was torn and did not give a plan number. She admitted that her neighbor brought to her the document appearing as number 1 on her supplementary list of documents which reads "unsurveyed residential plot DV1- Naivasha Township of 1.1 Ha" while "PMFI 1 reads unsurveyed plot of 0.9 Ha." She maintained that the Bishop bought land from Bartholomeo. When she was referred to the Plaintiff's application dated 14/07/1992 she confirmed that six people had applied. That among the six people was the plaintiff and Christopher Kamau. She admitted that her survey was registered on 12/08/2010 as per a letter by Juliko Geospatial. She also confirmed that one Christopher Kamau sold plot number Naivasha Municipality Block 8/3 to her. She then admitted that the extension to Block 8/3 was surveyed by Juliko on 12/08/2010 and that she did not know that the plaintiff's survey was done four years before hers; that by 2014 she already owned the extension and that between Block 8/3 and the disputed land there is a road. She confirmed that according to the documents Samson Gachuhi sought municipal approval to put up the structures and that Mr Gachuhi never claimed the property in dispute. That she never knew the plaintiff until he came to court.
50. On re-examination she stated that the letter dated 13/08/2015 sought a restriction to be placed on the land and that the letters to Naivasha Municipal Council show that he was claiming ownership.
51. The 2nd defendant called no evidence and at this juncture both defendants' cases were closed.

Submissions

52. The 1st defendant filed her submissions on 15/02/2022 and gave a summary of the pleadings and evidence and addressed the court on the following issues: what is the correct land reference number of the suit property; who is the rightful legal owner of the suit property; whether the plaintiff is entitled to orders of permanent injunction in respect to the suit property and who should pay the costs of the suit. She submitted that the Plaintiff's pleadings are defective as they do not specifically challenge the 1st defendant's title number Naivasha Municipality Block 8/97 and the suit should be dismissed with costs to the 1st defendant.
53. The 2nd defendant also filed its submissions on 15/02/2022 and submitted that they were wrongly enjoined in this suit as it was not within its mandate to establish who between the plaintiff and the 1st defendant is the legal owner of the suit property.
54. There are no submissions on record on behalf of the plaintiff.

Analysis and Determination

55. After considering the pleadings, the evidence and the submissions, it is my view that the only issues for determination are whether the plaintiff should be declared the lawful owner of the suit property and who should meet the costs of the suit.
56. It was the plaintiff's testimony that he applied for a plot and was allocated unsurveyed commercial plot Naivasha Town measuring approximately 0.9 Ha through a letter of allotment dated 27/10/1994 which he did not produce as part of his evidence. However, PW3 later confirmed that the plaintiff's



letter of allotment was available in the land office records and there is no doubt it was issued from that office. From the evidence adduced in this case there is also no doubt that the 1st defendant's letter of allotment was also issued by the same office. This court is now faced with two letters of allotment issued by one office at different times, but one, the 1st defendant's outstripped the other and was processed to produce a certificate of title.

57. The question that now arises is the validity of that title. The plaintiff desires it cancelled. A title is a legally protected document. Section 26 of the *Land Registration Act* provides as follows:

“26. (1) The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except—

(a) on the ground of fraud or misrepresentation to which the person is proved to be a party; or

(b) where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.”

58. Are there any circumstances in this case that can prompt issuance of orders cancelling the 1st defendant's title? First, it must be admitted that both parties received offers of land from the government, for a letter of allotment is an offer letter which the allottee may accept or decline. The plaintiff's letter of allotment seems to have had its genesis in the approval on 6/8/1992 of the application made by the plaintiff and several other persons to the President of the republic of Kenya. However, there is no indication as to the origin of the letter of allotment in favour of the 1st defendant, yet her chief witness, DW1, was categorical that the process of allocation of land commences with an application by a citizen for allocation. The only notable fact is that her allocation was a proposed extension to an earlier plot that she had been allocated nearby, namely Naivasha Municipality Block 8/3. However, it turned out through cross examination that it is not the case that was allocated to the 1st defendant; rather, she purchased it from one Christopher Kamau. A look at the plaintiff's application approved by the president shows that Christopher Kamau was one of the plaintiff's co-applicants; consequently, by her own evidence the 1st defendant has therefore confirmed that the plaintiff's letter of application for allocation of 2.0 ha in the locality was genuine.

59. It is therefore clear that both the plaintiff and the 1st defendant have other land within the same locality, acquired by different means and in respect of which titles have issued, and they are now following up on a second helping each through their respective letters of allotment.

60. As seen from the Court of Appeal's opinion in *Wreck Motors Enterprises v/s The Commissioner of Lands and 3 others*, civil appeal number 71 of 1997, the president's approval per se was not enough to guarantee the plaintiff title to the land as he had to obtain a letter of allotment and comply with its conditions. In that case it was stated as follows:

“In our view, the endorsement or the appending of his signature by H.E. the President on the applications to the Commissioner of Lands for the suit plot or for that matter any other unalienated Government Land is not sufficient to grant title over any land to anyone. H.E. the President only approves the application for consideration by the Commissioner of Lands for allocation of any such property. It does not amount to the applicants obtaining



title to such lands. Title to landed property normally comes into existence after issuance of a letter of allotment, meeting the conditions stated in such a letter and actual issuance thereafter of title document pursuant to provisions held. See Dr. Joseph N. K. Arap Ng'ok v/s Justice Moiyo Ole Keiyua & 4 Others, Civil Application No. NAI. 60 of 1997 (unreported).”

61. The plaintiff obtained a letter of allotment. This was confirmed by PW1 to be genuine and in the land records. But so did the 1st defendant, thus bringing the two parties to a kind of a draw.
62. Makhandia, J, as he then was, made the following observation in the case of *Gladys Wanjiru Ngacha v Teresia Chepsaat & 4 others* [2008] eKLR :

“It has been held severally that a letter of allotment per se is nothing but invitation to treat. It does not constitute a contract between the offerer and offeree and does not confer interest in land at all. It cannot thus be used to defeat a title of a person who is the registered proprietor of the said parcel of land. See Lilian Waithera Gachuhi v/s David Shikuku Mzee HCCC No. 10 of 2003 (unreported).”
63. However, contrary to the instant case, in the case of *Gladys Wanjiru Ngacha* (supra) there was only one letter of allotment. There was no contest between two parallel documents as that seen between the letters of allotments issued to the plaintiff and the 1st defendant in this case.
64. In the case of *Wreck Motor Enterprises v Commissioner of Lands & 3 others* [1997] eKLR, the court held as follows:

“Title to landed property normally comes into existence after issuance of a letter of allotment, meeting the conditions stated in such a letter and actual issuance thereafter of title document pursuant to provisions held. See Dr. Joseph N.K. Arap Ng'ok v Justice Moiyo ole Keiwua & 4 Others, Civil Application No. NAI.60 of 1997 (unreported).”
65. It would appear that even after the letter of allotment has lain idle for a long time an interest is created if payment of the sums required by the letter is made outside the period stated in the letter. *Stephen Mburu & 4 others v Comat Merchant Ltd & another* [2012] eKLR stated as follows:

“11. From a legal standpoint, a letter of allotment is not a title to property. It is a transient and often conditional right or offer to take the property. See Wreck Motor Enterprises Vs. Commissioner of Lands and others Nairobi Civil Appeal 71 of 1997 (unreported), Jaj Super Power Cash & Carry Limited Vs Nairobi City Council and others Nairobi, Civil Appeal 111 of 2002, Court of Appeal, (unreported). Mirrored against the 1st defendant’s registered interest in the land, and the evidence, the plaintiffs’ claim is on a quicksand. It may well be true that the 1st defendant did not pay the stand premium or other charges within the prescribed time in the letter of allotment. But payment was accepted. A registrable interest has been created and two lease titles issued. The registered interest ranks higher than the transient rights in the letters of allotment.”
66. Both the plaintiff and the 1st defendant therefore had to follow up on their respective allocations to ensure that they bore title and the 1st defendant became first to achieve that end as she was issued a certificate of title on 7th July 2015. Both the plaintiff and the 1st defendant paid for their respective allotments long after the expiry of the periods stated in each.



67. So, noting that the 1st defendant already has a certificate of title in her name, should that be the end of the matter? The answer is in the negative.

68. As seen in earlier court decisions the court has to examine the process by which a title was issued before it pronounces it valid or otherwise. In the case of *Daudi Kipturgen versus Commissioner of Lands & 4 others* (2015) eKLR the court observed as follows:

“In order to determine the question whether the lease held by the plaintiff is valid, it must be demonstrated that it was properly acquired. It is not enough that one waves a Lease or a Certificate of Lease and assert that he has good title by the mere possession of the Lease or Certificate of Lease. Where there is contention that a Lease or Certificate of Lease held by an individual was improperly acquired, then the holder thereof must demonstrate through evidence that the Lease or Certificate of Lease that he holds was properly acquired. The acquisition of title cannot be construed only in the end result; the process of acquisition is material. It follows that if a document of title was not acquired through the proper process, the title itself cannot be said to be a good title. If this were not the position, then all one would need to do is to manufacture a Lease or Certificate of Title at a backyard or the corner of a dingy street and by virtue thereof claim to the rightful proprietor of the land indicated therein. It is therefore necessary for this court to determine how the plaintiff ended up having a Lease and Certificate of Lease in his name and further determine if the Government did intend to issue the plaintiff with a Lease over the suit land.” (Emphasis mine.)

69. Also, in the case of *Munyu Maina v Hiram Gathiba Maina* [2013] eKLR the Court of Appeal (Visram, Koome & Otieno-Odek, JJ.A.) stated as follows:

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

70. The very existence of two parallel processes at the lands office further deters this court from relying on the mere issuance of a certificate of title to the 1st defendant to invoke the provisions of section 26 of the *Land Registration Act* to circumscribe the ambit of this court’s investigation, and I must therefore examine those two processes. Without examining the process by which it was issued I can not take it for granted that the 1st defendant’s title is valid simply for the reason that it has been issued by the lands office which was also processing the plaintiff’s allotment for the same land. Also while conducting that examination, this court must be aware that the plaintiff had a letter of allotment issued earlier than the defendant. Consequently, the court must trace the steps that parties took in seeking to obtain title to the suit land.

71. It was the plaintiff’s evidence that he had instructed a surveyor by the name of Samson G. Gachuhi , that he authorized the surveyor he appointed to do everything necessary, presumably, to obtain title to the plot he was allocated and to obtain approvals to put up structures on the suit property; this blanket authority arose from the circumstances that the plaintiff found himself in as evidenced by the letter dated 21/12/2012 in his bundle which alludes to ill health in his family and other problems as having caused him delay in processing of the title document to the suit land. The plaintiff’s surveyor admitted later that he had no interest in the suit property and that he did everything in relation to the



suit land on behalf of the plaintiff and under his authority; it is therefore no surprise that the plaintiff gave evidence that he paid survey fees of Ksh. 19,410/= for which he produced receipts in the name of Samson G. Gachuhi and that the original rate demand notice was also addressed to Samson G. Gachuhi. He testified that Samson G Gachuhi applied for approval to put up a structure on land parcel No. Naivasha Municipality Block 8/56 through the letter dated 23/07/2010 where Samson described the suit property as belonging to him. He also produced the letter of approval dated 12/08/2010 that was addressed to Samson G. Gachuhi. He testified that he put up an iron sheet structure, toilet, a container and an electric fence. It was his evidence that when he followed up for a title he was informed that the file had disappeared as another person was also processing a title deed for the suit land.

72. The plaintiff stated that after survey, the land allocated to him was found to be 2.473 Ha as per the survey map FR No. 456/172. There is evidence that the plaintiff's surveyor, Samson G. Gachuhi submitted survey plans to the Director of Surveys which were received on 18/08/2003 in respect of plot number 56.
73. From the contents of P. Exh. 8, the plaintiff's surveyor had to re-submit the plaintiff's documents because, as the letter says, the first lot either got lost or was misplaced. It was his evidence that he also noticed that someone was trying to register the same property and he therefore raised complaints. At this point it is noteworthy that the 1st defendant testified that the registration of her survey plan was temporarily stopped, and I think it is at this point that the 1st defendant's documents overtook the plaintiff's in the race towards title.
74. From a perusal of the documentary evidence from both sides in this dispute, this court is convinced that land parcel No. 56 that is claimed by the plaintiff is the same as parcel No. 97 that is said to be owned by the 1st defendant for the lay out of the said parcel in the plaintiff's survey plan resembles that in the 1st defendant's survey plan.
75. Samson G. Gichuhi, the plaintiff's surveyor, also admitted that that the plaintiff had applied for allocation of 2.0 Ha and had been allocated 1.1 Ha and 0.9 Ha vide separate allotments and that plaintiff already has a certificate of lease for Naivasha Municipality Block 8/9 that touches on the Nairobi Nakuru Highway. It may be safely presumed that that earlier title issued to the plaintiff arose from one of the two allotments.
76. Paul Muthike Mutwethau testified as PW3 and stated that he was the Principal Land Administration Officer and worked with the National Land Commission. It was his evidence that when he received the complaint from the plaintiff dated 31/03/2015 he went to the Senior Planning Records Office and got correspondence file No. 156239. In the said file he testified that he got the letter of allotment dated 18/12/1998 in favor of Olive Wamuhu the 1st defendant and that her allotment was done as an extension to Block 8/3. However, there is no information given by the parties as to when Naivasha Municipality Block 8/3 was registered in the name of the 1st defendant and the court is unable to verify whether the allotment of the extension was properly done after the 1st defendant's acquisition of Naivasha Municipality Block 8/3. In support of her assertions the 1st defendant produced the said letter of allotment for UNS residential plot Naivasha as an extension to Block 8/3 whose area was approximately 2.473 Ha. From PW3's evidence it is clear that the letter of allotment of the 1st defendant (DExh 1) is also available in the land office records, but it bears a date much more recent than the letter of allotment borne by the plaintiff. By the evidence of the same witness, it is also clear that the plaintiff's letter of allotment is in the land office records. Basing its conclusion on that evidence, this court is satisfied that both the plaintiff's and the 1st defendant's letters of allotment are genuine and that they were issued by the Lands office.



77. It is relevant that there is no evidence on record that the plaintiff's letter of allotment was ever recalled or cancelled by the lands office before the 1st defendant's letter of allotment was issued. To make it worse, before the 1st defendant was issued with her certificate of title, the lands office allowed the plaintiff to pay for the letter of allotment out of time which in this court's view had the effect of revalidating his interest in the land; in the absence of any other issued title, such revalidation must be in retrospect up to the date of the plaintiff's letter of allotment and it makes it rank on a higher priority to the 1st defendant's letter; it also affixes a stamp of approval on the survey exercise and the survey plan produced and submitted by Kasyi & Company Ltd, the plaintiff's surveyors which was prepared long before the 1st defendant's survey plan.
78. The plaintiff claimed that the parcel of land allocated to him was approximately 0.9 Ha. Indeed, his letter of allotment reads that the size of the land allotted is 0.9 ha. His witness Samson G. Gachuhi on the other hand testified that after he had surveyed the property he found it to be 2.473 Ha. It was also his evidence that the survey plan was registered as FR No. 456/172 and defined the property as Naivasha Municipality Block 8/56. The evidence in this case also shows that the 1st defendant's surveyor, one J.O.O.K. Obado, had the survey plan FR NO 572/188 registered in respect of parcel No Naivasha Municipality Block 8/97. It is also noteworthy that the 1st defendant's certificate of lease was issued on 7/7/2015 during the pendency of the dispute between her and the plaintiff and that it emanated from a survey plan made long after the plaintiff's survey plan.
79. Regarding possession, it was the 1st defendant's evidence that in the year 2006 Samson G. Gachuhi had entered the suit property and put a container thereon. At the date of the hearing the plaintiff averred that he was still in possession.
80. In the case of *Koinange & 13 others v Koinange* [1986] KLR 23 the court restated the rule of evidence that whoever alleges must prove. This rule is embodied in section 107 of the *Evidence Act* cap 80 which provides as follows:
- “Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.”
81. This is a case in which each of the parties has a letter of allotment issued by the Lands office and in respect of which separate Survey plans were lodged and registered with the Director of Surveys. The letters of allotment were issued on different dates with the plaintiff's being the first in time. The survey plans over the same suit land were also lodged for registration on different dates, with the plaintiff's being the first in time. Somehow, like the quicker cripple at Bethesda, the 1st defendant's survey plan, quite inexplicably and notwithstanding the prevailing storm of this dispute, outstripped the plaintiff's in the race into the title bearing pool with the result that the 1st defendant obtained a certificate of lease in her favour before the plaintiff got any.
82. The foregoing analysis leaves this court with only one option: that of determining this dispute on the basis of which of the parties' documents that formed or could have formed the root of title to the disputed land preceded the other. It is therefore plain to see now that the determination of the instant suit depends on two sets of crucial documents of the parties herein, that is, the letters of allotment and the survey plans issued in favour of the parties respectively.
83. At this point it is worthy of note that the 1st defendant's claim that the land was previously also being claimed by Samson G. Gachuhi and that the plaintiff is pursuing this case on Samson's behalf must not move this court an inch for two reasons. The first reason is that Samson renounced any interest in the suit property and indicated that the plaintiff had delegated everything to him for the



purposes of obtaining the title document. Whilst not forgetting that the origin of the fake Samson letter of allotment was not traced, perchance Samson went behind his principal's (plaintiff's) back and attempted to forge a letter of allotment which was denounced by Mr S. M. Osodo of the lands office in his letter (DExh 4), that attempt would not be relevant to the dispute between the plaintiff and the 1st defendant who have demonstrated that they had been both issued with genuine letters of allotment. The second reason is that in the course of the hearing of the case the plaintiff was cross-examined by counsel for the 1st defendant and he appeared to show manifest consternation at the proposition that Samson could have procured a "letter of allotment" in his name over the suit land whose title he was supposed to pursue on the plaintiff's behalf.

84. The plaintiff's letter of allotment and survey plan both precede the 1st defendants. The plaintiff's survey plan FR 456/172 went through the appropriate processes before its march towards title issuance was halted by a letter (DExh 4) dated 12/8/2011 from the lands office which read as follows:

The Director of Surveys,

Nairobi.

RE: UNS. Residential Plot: Naivasha Extension To Block8/3.

Further to my letter on the above plot, I wish to confirm that according to records the plot was issued to Ms Olive Wamuhu Kinyanjui. The allotment in the name of Samson G. Gachuhi Ref: 19447 /XXI of October 27, 1994 purported to have been signed by me is a forgery. you may proceed and approve survey submitted by Olive Kinyanjui.

By a copy of this letter the Town Clerk is requested to note.

S.M. Osodo

For: Commissioner of Lands.

Cc

The Town Clerk

Naivasha Town Council

Naivasha.

85. The plaintiff's survey plan FR 456/172 refers to letter of allotment Ref No 19447/XXI dated 27/10/94. If Samson had attempted to forge a letter of allotment and use it in his own favour rather than the plaintiff's, he used the same reference in the plaintiff's genuine letter of allotment with the consequence that the cancellation of the plaintiff's survey plan FR 456/172 was premised on the allegation, now proved false, that it was made on the strength of Samson's fake letter of allotment. A more minute scrutiny of the survey plan no. FR 456/172 shows two faint lines across the middle of the document and between them are, almost imperceptible to the casual observer, the words:

"Cancelled See Ct67/59/20 and Letter Ref CLR/A /39/VolVIII/88 of 3.2.15 AND REF 156239 of 12.8.11. Comps to be cancelled once found."

86. It is my view that the survey plan FR 456/172, having cited the correct allotment letter reference of the plaintiff, ought not have been cancelled simply for the reason that it bore the ref. number on a forged letter of allotment faked in Samson's name; that, in my view, was the injustice against the plaintiff that the lands office through one S.M. Osodo in his letter dated 12/8/2011 committed in this dispute, for it summarily paved the way for the preparation of title documents in favour of the 1st defendant. And



there evaporated the plaintiff's hope of getting title, despite having documents showing that he had been pursuing the same as long ago as the year 2003 (see PExh.7).

87. The 1st defendant has raised the issue that the plaintiff's letter of allotment bears the measurements "0.9" while the suit land measures 2.4720 ha. However, it is clear to this court from the circumstances of this case that letters of allotment issued before survey do not usually bear the correct measurements of the allocated land. This is also exemplified by the measurements in the 1st defendant's letter of allotment which are at variance with the measurements on the certificate of lease. That is the sole reason why survey of allocated land is necessary before title is processed.
88. In the case of *Republic versus City Council of Nairobi & 3 others* (2014) eKLR, Odunga, J. had this to say about land that has already been allotted:
- "Once allotment letter is issued and the allottee meets the conditions therein, the land in question is no longer available for allotment since a letter of allotment confers absolute right of ownership unless it is challenged by the allotting authority or is acquired through fraud, mistake or misrepresentation or that the allotment was out rightly illegal or it was against public interest. In other words, where land has been allocated, the same land cannot be reallocated unless the first allocation is validly and lawfully cancelled."
89. I adopt the reasoning of Odunga J in the *Republic versus City Council of Nairobi & 3 others* (2014) eKLR (supra). A letter of allotment needs to be cancelled to pave the way for the issuance of another letter. Upon the adoption of this reasoning, it is evident that the plaintiff's letter of allotment having issued, there remained nothing to be allocated anyone else thereafter unless the issuing authority expressly cancelled that letter. Instead of cancelling it the lands office revalidated it by accepting not only survey plan for the land but also payment for the letter of allotment. These matters are not denied by the defendants.
90. It is my view that the 1st defendant was a latter day entrant into the race to acquire the title to the suit land. She obtained a letter of allotment later than the plaintiff and began processing it much later than the plaintiff did. The very fact that the plaintiff's survey plan bore parcel number 56 and her survey plan bore the number 97 while they are in the same block is evidence that the processing of her title began after the plaintiff had begun processing his. It lends credence to the claim that the plaintiff's documents at one point disappeared. While there is no direct evidence on the issue, this court can not rule out that that event was not occasioned by action on the part of the 1st defendant or her agents in their attempts to stop the plaintiff's onward march towards acquisition of title. In addition, the 1st defendant's own witness DW1 stated with authority that any new computation would be null and void; this statement was directed at the plaintiff's computation, but the witness forgot that the plaintiff's survey plan preceded the 1st defendant's and so the statement should have been directed at the 1st defendant's computation.
91. Taking the view that the 1st defendant's title is valid in the disclosed circumstances of this case is akin to implicitly cultivating and watering the idea that our nation's land offices have a right to entertain rat races between allottees, the deployment of chaos and subterfuge and the reign of the law of the jungle in seeking title to land and double allocation, the malaises that so often lead to protracted legal battles between citizens. The process of determining the present case had been compounded by the fact that there are two witnesses, both who work in the public service, who have taken opposing stances in the matter, and the allegations by both parties that they each faced challenges at the lands office while processing title because their respective files by which they pursued title to the suit land at one time disappeared, which is evidence of some very serious competition at play between the parties in this



case, whether directly or through agents. The holding of different files relating to the same land being processed in favour of two different persons and the lack of synchronization between the allocation office as well as the possibilities of officers subjectively taking sides in the matter, even to the extent of denying documents obviously issued by the lands office and feigning lack of knowledge of others, marked the extent of the mess the parties found themselves in. The issue of succession, whereby the office of the Commissioner of Lands was replaced by the National Land Commission while the letters of allotment to the combatants herein had not yielded titles, did not help matters, and this court reads clear evidence of turf wars in the dispute, which should never have overflowed into the plaintiff's and defendant's lives in the first place.

92. I am of the view that the 1st defendant's certificate of title was issued by means of misrepresentation of which she played a part by proceeding as though the plaintiff's legally lodged survey documents did not exist. It is her survey plan, prepared hurriedly on 30/1/2015 lodged in 2010 that prompted the wrongful cancellation of the plaintiff's survey plan prepared on 10/1/2003 and lodged in 2006. In this I am convinced that the 1st defendant did not act alone, but was assisted by unseen hands at the lands office hence the disappearance of the plaintiff's file and documents that slowed down his title issuance process. The 1st defendant's certificate of title can not therefore be upheld by court in view of the various facts disclosed in this case.
93. The foregoing analysis leads this court to the sole conclusion that the plaintiff's claim is merited and the 1st defendant's defence lacks merit. I would have considered the splitting of the land in certain shares between the parties but the approach in this case by both parties was totally non-conciliatory, and deters that intervention; I must therefore allow the total success of whoever has proved their claim. In any event, since I had already found herein before that lands may upon survey be found to be larger or lesser than what is stated in the letter of allotment, I am content with allowing the plaintiff to possess the entire portion of land identified as parcel no 56 as surveyed in the FR/456/172.
94. I therefore enter judgment in favour of the plaintiff against the 1st defendant and I order as follows:
- a. The survey plan FR 572/188 is hereby cancelled.
 - b. The survey plan FR 456/172 is hereby reinstated and therefore it shall be registered and effected by the Director of Surveys in favour of the plaintiff.
 - c. A declaration is hereby issued declaring that the plaintiff is the lawful and rightful owner of the parcel of all that land identified as parcel no 56 in Survey Plan No FR/456/172 (formerly unsurveyed commercial plot Naivasha Town) situate in Naivasha Town, Naivasha Sub County, Nakuru County to the exclusion of the 1st defendant and all other persons.
 - d. A permanent injunction restraining the defendants by themselves, their agents, servants, employees and/or persons claiming under or in trust for them, from entering into, remaining upon, fencing, selling, disposing, alienating, accumulating building or other materials, digging a dam or water reservoir, constructing permanent or temporary structures upon, or otherwise committing acts of waste, equitable or otherwise, or in any manner howsoever interfering the plaintiff's quiet use, possession and enjoyment of the parcel of land identified as parcel no 56 in survey plan no FR/456/172 (formerly unsurveyed commercial plot Naivasha Town) situate in Naivasha Town, Naivasha Sub County, Nakuru County.
 - e. The certificate of lease dated 7/7/2015 and the lease dated 12/6/2015 both issued in the name of the 1st defendant in respect of Naivasha Municipality Block 8/97 are hereby cancelled.
 - f. The Director of Surveys shall forward all necessary documents and instructions to the Chief Land Registrar as will enable him to prepare and issue the plaintiff with a lease and a certificate



of lease in the name of Joseph Njenga Ngarama in respect of land identified as parcel no 56 as surveyed under survey plan FR 456/172.

g. The costs of this suit shall be borne by the 1st defendant only.

It is so ordered.

DATED, SIGNED AND ISSUED AT NAKURU VIA ELECTRONIC MAIL ON THIS 26TH DAY OF MAY, 2022.

MWANGI NJOROGE

JUDGE, ELC, NAKURU

