



Langiu alias Angela Koki Matheka Joanna Kitengele Langiu [Suing as the legal representatives of the Estate of Pietro Langiu - Deceased) v Office & Garden Solutions (K) Ltd & another (Environment & Land Case 1283 of 2015) [2025] KEELC 401 (KLR) (27 January 2025) (Judgment)

Neutral citation: [2025] KEELC 401 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 1283 OF 2015**

**JO MBOYA, J
JANUARY 27, 2025**

BETWEEN

ANGELA KOKI LANGIU ALIAS ANGELA KOKI MATHEKA JOANNA KITENGELE LANGIU [SUING AS THE LEGAL REPRESENTATIVES OF THE ESTATE OF PIETRO LANGIU - DECEASED) PLAINTIFF

AND

**OFFICE & GARDEN SOLUTIONS (K) LTD 1ST DEFENDANT
REGISTRAR OF TITLES 2ND DEFENDANT**

JUDGMENT

Introduction and Background

1. The Plaintiff filed the instant suit vide a Plaint dated 11th day of December 2015; which was amended and subsequently Re-amended. The Re-amended Plaint dated 29th day of November 2016; seeks the following reliefs:
 - i. A declaration that the plaintiff is the bona-fide registered owner of the suit property L.R No. 15314/4 and that the 1st defendant's action of claiming ownership thereof is baseless, unfounded, a breach of the law and an affront to the Plaintiff's proprietary rights over the suit property.
 - ii. A declaration that any title held by the 1st Defendant over the suit property is fraudulent and/or a fake title and void ab initio and consequently a mandatory order do issue directed at the 2nd Defendant or any other relevant Government entity tasked with the responsibility of issuing titles; Registrar of Titles/Chief Land Registrar to cancel and/or revoke any such said title held by the 1st defendant over the suit property (L.R No. 15314/4) or any portion thereof.



- iii. A Permanent injunction restraining the 1st Defendant by itself, its agents, servants, employees and/or proxies from trespassing, excising, entering, fencing, constructing, building, dumping of any building materials or any other materials, erecting nay boards, alienating, selling, encroaching, utilizing and/or interfering in whatsoever manner with the Plaintiffs/Applicant's quiet possession and ownership of the suit property [L.R No.15314/4].
 - iv. A Mandatory injunction requiring the 1st Defendant by itself, its agents, servants and/or employees to remove any materials of whatever nature, signboards or any other nuisance placed on the suit property within fourteen (14) days or such a reasonable period as the Honourable court may deem fit; and in default of which the Plaintiff be at liberty to remove any of the said materials and/or nuisance at the Defendant's cost.
 - v. A Mandatory order requiring the 2nd Defendant to reconstruct the Deed File and/or Correspondences File or any other Records that may be missing at the Lands Office Nairobi as held by the said 2nd Defendant in regard to the suit property L.R No. 15314/4 to facilitate the Plaintiff dealing[s] with the suit property in such a legal manner as she shall deem appropriate.
 - vi. Costs of this suit.
 - vii. Any other or further Relief[s] that this Honourable court may deem fit and just to grant.
2. Upon being served with the Further amended Plaint the 1st Defendant duly entered appearance and filed a statement of defence and counterclaim dated 16th day of February 2018. Pertinently the counterclaim on behalf of the 1st Defendant seeks the following reliefs:
- i. A declaration that the 1st Defendant is the bona-fide allottee and registered proprietor of the suit property namely: Title Number I.R 169828 – L.R No.15314/4 and the legal and rightful owner thereof.
 - ii. A declaration that the 1st Defendant being the registered proprietor is entitled to the ownership, occupation, use and enjoyment of the suit property namely Title number I.R 169828 – L.R. 15314/4.
 - iii. A declaration that the certificate of title exhibited by the plaintiffs purportedly executed and sealed by the 2nd defendant on 22.12.2003 – Title No. I.R 93729 – L.R Number 15314/4 does not emanate from the 2nd Defendant and is therefore null and void.
 - iv. That a permanent injunction does issue restraining the Plaintiffs whether by themselves, their agents, servants, employees, assigns or whosoever from offering for sale, selling, disposing off, transferring, subdividing, occupying, taking and/or remaining in possession, alienating and/or in any other manner dealing and/or interfering with 1st defendant's quiet possession and ownership of the suit property known as Title No. I.R 169828 – L.R No. 15314/4
 - v. Any other orders and/or directions as this Honourable court deems just and fit.
 - vi. Costs of the suit and the counterclaim.
3. On the other hand, the 2nd Defendant also entered appearance and filed a statement of Defence. For good measure, the 2nd Defendant filed the statement of Defence dated 27th day of March 2019; and wherein the 2nd Defendant denied the averments at the foot of the Further amended Plaint.



4. The Plaintiff herein thereafter filed a Reply to the Statement of Defence and Defence to the counterclaim. Instructively, the Reply to statement of Defence and Defence to counterclaim is dated the 12th day of March 2018.
5. The instant matter came up for case conference on 26th day of May 2021; whereupon the advocate for the parties intimated to the court that same [advocates for the parties] confirmed filing and exchange of the lists and bundle of documents; list of witnesses and witness statements.
6. Moreover, the advocates for the parties confirmed that the matter was ready for hearing. To this end, the Court proceeded to and fixed the matter for hearing.

Evidence by the Parties:

a. Plaintiff's case

7. The Plaintiff's case is anchored and premised on the evidence of two [2] witnesses, namely: Angela Koki Langiu and Patrick Mutinda Musembi, respectively. Same testified as PW 1 and PW 2, respectively.
8. It was the evidence of PW 1 that same [PW 1] is the Plaintiff in respect of the instant matter. Furthermore, the witness averred that by virtue of being the Plaintiff, same [Witness] is conversant with and knowledgeable of the facts of this matter.
9. It was the further testimony of the witness that same [PW1] is also the Legal Administratrix of the Estate of the deceased. In particular, the witness testified that same was issued with the requisite grant of letters of administration on 26th day of September 2016. In this regard, the witness added that same is therefore seized of the requisite capacity to represent the Estate of the deceased.
10. Other than the foregoing, the witness [PW1] averred that the instant matter was filed by the deceased during his lifetime. Moreover, the witness added that the deceased also recorded and filed a witness statement dated 19th day of February 2020. To this end, the witness sought to adopt and rely on the witness statement dated 19th day of February 2020. Suffice to state that the witness statement dated 19th day of February 2020, was thereafter adopted and constituted as the Evidence in chief of the witness.
11. It was the further testimony of the witness that other than the witness statement which was recorded and filed by the deceased, same [the deceased] also filed a List and bundle of documents dated 11th day of December 2015. In this regard, the witness sought to adopt and rely on the contents of the documents at the foot of the List dated 11th day of December 2015. There being no objection to the production of the documents under reference, the documents at the foot of the List dated 15th day of November 2015, were duly tendered and admitted as Plaintiff's Exhibits P1 – P9, respectively.
12. Additionally, the witness referenced the list and bundle of documents dated 19th day of February 2020; and thereafter sought to produce the documents as exhibits before the court. There being no objection to the production of the document at the foot of the list and bundle dated 19th day of February 2020;, the documents was admitted and marked as Exhibit P 10.
13. Moreover, the witness also adverted to the List and bundle of documents dated 12th day of March 2018; containing 9 documents and thereafter sought to tender and produce them before the court. However, the production of the documents under reference was objected to culminating into the delivery of a ruling by the Honourable court.



14. For coherence, the court ordered that the documents at the foot of the list and bundle dated 12th day of March 2018; are not admissible. Consequently, and in this regard, the documents beforehand were marked for identification as PMFI 11 to PMFI 19, respectively.
15. It was the further testimony of the witness that same [witness] also filed a witness statement dated 19th day of February 2022. In this regard, the witness sought to adopt and rely on the witness statement as her evidence in chief. To this end, the witness statement was adopted and constituted as the further evidence in chief of the witness.
16. Other than the contents of the witness statements which were adopted by the witness, the witness averred that LR. No. 15314/4 [suit property] belonged to and was registered in the name of the Deceased. Moreover, the witness averred that the suit property herein arose from the sub-division of the original title, namely; L.R 9953 [Grant number] L.R 16910.
17. It was the further testimony of the witness that the suit property belonged to the deceased. Further and in any event, the witness [PW1] added that the deceased was in occupation of the suit property up to and including his [Deceased's] death/ demise.
18. In addition, the witness averred that the deceased was issued with a Certificate of title on the 22nd day of December 2003. In this regard, the witness averred that the suit property was therefore not available to be allocated to the 1st Defendant vide a letter of allotment dated 1st day of April 2004, or at all.
19. On cross examination by Learned counsel for the 1st Defendant, the witness averred that the suit property is one of the ten [10] sub-divisions that arose from the original parcel of land. Furthermore, the witness averred that the sub-division of the original parcel of land was authorized and sanctioned by the various Government Departments.
20. While still under further cross examination the witness averred that the original certificate of title in respect of the suit property is under her custody. Nevertheless, the witness added that same has not produced a copy of the original certificate of title before the court.
21. It was the further testimony of the witness that the dispute beforehand relates to L.R No. 15324/4. It was the further testimony of the witness that same has undertaken and carried out a search over and in respect of the suit property. Furthermore, the witness added that the search was issued on the 9th February 2022.
22. It was the further testimony of the witness [PW1] that the suit property came from the original title L.R 9953. While still under cross examination, the witness testified that same has seen the letter from the office of the Chief Land Registrar. The witness averred that the letter under reference indicated that the title did not come from the office of the Land Registrar. Nevertheless, it was the testimony of the witness that same [witness] did not agree with the content[s] of the letter under reference.
23. It was the testimony of the witness that the suit property lawfully belonged to the deceased. In this regard, the witness averred that the claim by the 1st Defendant to and in respect of the suit property is misconceived and fraudulent.
24. Moreover, it was the testimony of the witness that same [witness] filed Judicial Review proceedings, namely; Milimani HCC JR No. 169 of 2017. In addition, the witness averred that the Judicial Review proceedings was heard and determined. In this regard, the witness testified that same has tendered and produced before the court the documents relative to and concerning the Judicial Review Proceedings.



25. The witness further testified that the Judicial Review proceedings was concluded vide consent whereupon it was agreed that the Chief Land Registrar was to reconstruct the Register; the Deed File and the Correspondence File relating to the suit property.
26. Other than the foregoing, it was the testimony of the witness that there was another case; namely; ELC No. 1327 of 2007 which touched on and concerned ownership of the suit property. In particular, the witness averred that the said suit was compromised vide the consent which was thereafter adopted and ratified by the court.
27. Upon being shown a Letter of allotment in favour of the 1st Defendant, the witness averred that the Letter of allotment could not be issued in respect of the suit property. In any event, the witness averred that the Letter of allotment in question was fraudulent.
28. On cross examination by Learned counsel for the 2nd Defendant, the witness averred that L.R No. 15314/4 was registered in the name of the Deceased. At any rate, the witness added that the deceased purchased the land in question.
29. It was the further testimony of the witness that the suit property was issued with a certificate of title in the year 2003. Besides, the witness averred that the deceased and herself [witness] lived on the suit property since the year 1992.
30. While still under cross examination, the witness averred that the suit property lawful belonged to the estate of the deceased. In this regard, the witness testified that the suit property does not belong to the 1st Defendant, either as claimed or at all.
31. The Second [2nd] Witness who testified on behalf of the Plaintiff is Patrick Mutinda Musembi. Same testified as PW 2.
32. It was the testimony of the witness [PW 2] that same is a licensed/registered surveyor. Moreover, the witness averred that same [Witness] works for Accorn Survey and Engineering co. Ltd. In any event, the witness added that same has been a surveyor since the year 2009.
33. Furthermore, the witness averred that same is conversant with the facts of the instant matter. In this regard, the witness averred that he [Witness] has recorded and filed a witness statement dated 4th day of April 2023; and which witness statement, the witness sought to adopt and rely on as his evidence in chief. Instructively, the witness statement dated 4th day of April 2023; was adopted and constituted as the evidence in chief of the witness.
34. Other than the foregoing, the witness averred that same has also filed a report before the court. To this end, the witness referenced the report dated 28th day of February 2023; and which report the witness sought to tender and produce before the court as an Exhibit.
35. There being no objection to the production of the survey report dated 28th day of February 2023; same [survey report] was tendered and produced as Exhibit P 13 on behalf of the Plaintiff.
36. On cross examination by Learned counsel for the 1st Defendant, the witness averred that same is the one who prepared the report under reference. Furthermore, the witness testified that before preparing the report same [witness] visited the site. It was the further testimony of the witness that while at the site, same [witness] was able to confirm and verify the existence of the beacons on the suit property.
37. The witness further testified that same also visited the offices of the Ministry of Lands, Housing, Public Works and Urban Developments. In addition, the witness averred that in the course of visiting the offices of the Ministry of Lands; same was able to verify the authenticity of various documents.



38. Nevertheless, and while still under cross examination, the witness averred that same has made various observations at the foot of the survey report. In particular, the witness testified that same has stated that the Letter of allotment in favour of the 1st Defendant was irregular and illegal.
39. Other than the foregoing, the witness testified that same confirmed that the Plaintiff's title/grant is lawful. Be that as it may, the witness added that it was not possible to issue a Letter of allotment in favour of the 1st Defendant during the subsistence of the Grant in favour of the Plaintiff herein.
40. On re-examination by Learned counsel for the Plaintiff, the witness testified that same [witness] is a licensed and registered surveyor. Besides, the witness averred that same is authorized to practice as a surveyor.
41. It was the further testimony of the witness that upon instructions from the Plaintiff same [witness] undertook historical/background check in respect of the suit property. In this regard, the witness averred that same visited the Ministry of land, as well as Directorate of survey.
42. On the other hand, the witness averred that same procured and obtained a Certificate of official search. The witness stated that the Certificate of official search reflected the name of the deceased.
43. Finally, it was the testimony of the witness that the Letter of allotment in favour of the 1st Defendant was/is illegal.
44. With the forgoing testimony, the Plaintiffs' case was closed.

b. 1st Defendant's case:

45. Though the 1st Defendant filed a statement of defense and counterclaim as well as List and bundle of documents, the 1st Defendant, however did not call any witness. For good measure, the 1st Defendant's case was closed without any evidence being tendered and/produced.

c. The 2nd defendant's case:

46. Similarly, the 2nd Defendant duly entered appearance and filed a statement of defense. Moreover, the 2nd Defendant also filed a witness statement.
47. Nevertheless, when the matter came up for Defense hearing, Learned counsel for the 2nd Defendant applied for an adjournment to call the witness on behalf of the 2nd Defendant. However, the application for an adjournment was opposed and thereafter the court was called upon to craft a ruling.
48. Suffice to state that the application for adjournment by and on behalf of the 2nd Defendant was declined. Consequently, and in this regard, the 2nd Defendant proceeded to and closed her case without calling any evidence.

Parties Submissions:

49. Following the conclusion of the hearing, the advocates for the Parties sought for time within which to file and exchange written submissions. In this regard, the court proceeded to and circumscribed the timelines for the filing and exchange of the written submissions.
50. Suffice it to state that the parties thereafter filed their respective submissions and which submissions form part of the record of the court. The written submissions herein shall be referenced and considered by the court in determining the issues arising from the pleadings and the evidence on record.



51. Even though the court has neither rehashed nor reproduced the submissions on behalf of the respective parties, it is important to underscore that the submissions on record have greatly assisted the court in evaluating and determining the issues in dispute. In this regard, the court is indebted to the advocates for the respective parties.

Issues for Determination:

52. Having reviewed the pleadings filed; and upon taking into consideration the evidence on record [both oral and documentary] and upon consideration of the written submissions filed on behalf of the respective parties, the following issue do crystalize[emerge] and are thus worthy of determination;
- i. Whether the Plaintiff[s] herein are the lawful proprietors of the suit property or otherwise.
 - ii. Whether the 1st Defendant has any lawful rights and/or interest over and in respect of the suit property or otherwise.
 - iii. What Reliefs;if any, ought to be granted.

Analysis and Determination

Issue Number 1

Whether the Plaintiffs herein are the Lawful proprietors of the suit property or otherwise.

53. The instant suit was filed and/or commenced by one Pietro Langiu, [now deceased] who contended that the suit property, namely, L.R No. 15314/4 lawfully belongs to him [deceased]. In this regard, the deceased tendered various documents to underpin his claim to and in respect of the suit property.
54. Be that as it may, Pietro Langiu [who was the original Plaintiff] died during the pendency of the suit and same [deceased] was substituted by his Legal administratrix, who is the current Plaintiff. Suffice it to state that the current Plaintiff herein procured and obtained the requisite Grant of letters of administration dated the 26th September 2016.
55. Having been duly substituted in place of the deceased, the Plaintiff herein who testified as PW1 adopted and relied on the witness statement of Pietro Langiu [deceased] dated the 11th December 2015.
56. Additionally, the Plaintiff also adopted and relied on her witness statement dated the 19th December 2020 and wherein the Plaintiff reiterated the contents/averments adverted to at the foot of the original witness statement dated the 15th December 2015.
57. Moreover, the Plaintiff tendered and produced before the court assorted documents, including a copy of the title in respect of L.R No. 9953, which is the mother title that birthed inter-alia the suit property. For good measure, the original certificate of title in respect of the mother parcel was tendered and produced as Exhibit P1. From the mother title which was tendered and produced before the court, there is a history relating to various entries duly contained on the face of the title. The entries indicate the various transactions that had hitherto been entered and undertaken in respect of the suit property.
58. Pertinently, there is the entry which was made on the 28th September 1982 vide presentation number 903; and which adverts to the transfer of the mother title, namely, L.R No. 9953 to the names of Riccardo Lizier and Pietro Langiu [Deceased] as Joint tenants.
59. It is also worthy to state that PW1 also ventured forward and tendered before the court evidence relating to the application by the registered owners of L.R No. 9953 [the original title] for purposes of sub-



division. In this regard, it is apposite to reference the application documents which were tendered before the court as exhibits on behalf of the Plaintiff.

60. The totality of the evidence that was tendered by and on behalf of the Plaintiff herein demonstrate the historical background starting with the registration of L.R No. 9953 [original title] in the names of Riccard Lizer and Pietro Langiu [now Deceased] respectively; and thereafter the sub-division of the original title into 10 parcels [sub-divisions] inter-alia the suit property.
61. Furthermore, the evidence on record also demonstrates the transfer and registration of the suit property into the name of Pietro Langiu, [now deceased].
62. On the other hand, the 1st Defendant contended that the suit property was allocated unto the 1st Defendant on the basis of [sic] the Letter of allotment dated the 1st April 2004 and thereafter that the suit property was transferred and registered in the name of the 1st Defendant vide the lease instrument registered on the 3rd December 2015.
63. It is imperative to point out that the Plaintiff herein has tendered and adduced before the court credible evidence demonstrating how the suit property came into being by way of sub-division of L.R No. 9953 [the original title].
64. Moreover, it is also worthy to recall and reiterate that prior to the sub-division of the original title [L.R No. 9953], the registered owners thereof, namely, Riccardo Lizer and Pietro Langiu, [the Deceased] sought for and obtained an extension of the lease. Instructively, the lease in favour of the original owners was duly extended.
65. Further and at any rate, it is also evident that upon the successful sub-division of the original parcel of land and the creation of the resultant sub-divisions, inter-alia the suit property, the Registrar of title proceeded to and issued a certificate of title in favor of Pietro Langiu. To this end, it is imperative to reference the certificate of title that was issued on the 5th January 2004.
66. Without belaboring the point, it is the finding and holding of this court that the Plaintiff herein has tendered and placed before the court plausible and sufficient evidence to warrant a finding in her favor. In particular, the Plaintiff has demonstrated a consistent chain of events and transactions that underpin the process culminating into the issuance of the certificate of title in respect of the suit property.
67. Pertinently, where a dispute touches on the validity or otherwise of a certificate of title, it behooves the contestants, in this case the Plaintiff and the 1st Defendant, to justify the process leading to their respective titles.
68. For good measure, it is not enough for one, whether same being the Plaintiff or the 1st Defendant, to wave on the face of the court a certificate of title and thereafter imagine that the existence of [sic] such certificate of title by and of itself, would suffice.
69. The need and necessity to justify the transactional processe[s] attendant to the issuance of the Certificate of Title was highlighted in the case of *Munyu Maina v Hiram Gathiha Maina* [2013]eKLR, the where Court of Appeal stated and held thus;

“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. It is our considered view that the respondent did not go this extra mile that is



required of him and no evidence was led to rebut the appellant's testimony. We find that a trust exists in relation to the suit property."

70. Moreover, the same Legal position was re-visited by the Court in the case of *Hubert L Martine v Margaret Kamar* [2016]eKLR, where the court stated as observed as hereunder;

"A court when faced with a case of two or more titles over the same land has to make an investigation so that it can be discovered which of the two titles should be upheld. This investigation must start at the root of the title and follow all processes and procedures that brought forth the two titles at hand. It follows that the title that is to be upheld is that which conformed to procedure and can properly trace its root without a break in the chain. The parties to such litigation must always bear in mind that their title is under scrutiny and they need to demonstrate how they got their titles starting with its root. No party should take it for granted that simply because they have a title deed or Certificate of Lease, then they have a right over the property. The other party also has a similar document and there is therefore no advantage in hinging one's case solely on the title document that they hold. Every party must show that their title has a good foundation and passed properly to the current title holder."

71. Similarly, the legal position that ownership to land is not merely predicated and anchored on a certificate of title without justification of the process underpinning its acquisition was also highlighted/elaborated in the case of *Daudi Kiptugen v The Commissioner of Lands & Another* [2015]eKLR, where the court stated as hereunder;

"...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 a proper process, the title itself cannot be a good title.

If this were not the position then all one would need to do is to manufacture a Lease or a Certificate of title at a backyard or the corner of a dingy street, and by virtue thereof, claim to be the rightful proprietor of the land indicated therein."

72. Guided by the ratio decidendi espoused in the various decisions referenced in the preceding paragraphs, it is my finding and holding that the Plaintiff has indeed demonstrated blow by blow, the process attendant to and culminating into the issuance of the certificate of title in respect of the suit property.

73. Other than the fact that the Plaintiff has placed before the court the requisite transactional documents underpinning her ownership to and in respect of the suit property, it is also important to recall that the Plaintiff herein had also filed Judicial Review proceedings against the Registrar of Titles [the Second Defendant herein] and wherein the Plaintiff had sought for various orders touching on and concerning the reconstruction of the official records obtaining at the Land registry.

74. In particular, the Plaintiff had sought for an order of mandamus to compel the reconstruction of the Deed File; the Correspondence File and the Records relating to the Suit Property.

75. As pertains to the import of the Judicial Review proceedings that was filed by the Plaintiff herein, it is imperative to reproduce the evidence of PW1. In this regard, the relevant portion of the evidence is reproduced as hereunder;

"I have filed Judicial Review vide case number HCCJR 169 of 2017. According to the case I have explained the circumstances attendant to the title herein. I am aware that the court



issued certain orders in respect of JR No. 169 of 2017. I wish to add that thereafter the orders were duly extracted and the same were served upon the chief land registrar in the matter”.

76. Furthermore, PW1 proceeded/ ventured forward and stated thus;

“Despite the service of the orders on the chief land registrar. I am not aware whether same has duly complied with the terms of the said orders. I wish to add that the orders that were issued were to the effect that the chief land registrar was to reconstruct the deed file in respect of the suit property”.

77. It is important to state and underscore that the Deed file and the attendant records pertaining to the suit property were interfered with and/or misplaced. In this respect, the Plaintiff herein, who was the Ex-parte Applicant was constrained to and indeed filed judicial review proceedings wherein same [Plaintiff] sought for the reconstruction of the records at the land registry, including the Deed file.

78. Suffice it to point out that the orders that were issued vide JR No. 169 of 2017, touched on and concerned the suit property. Indeed, the orders in question were orders in rem. To this end, it important to underscore that the orders under reference are valid as against the whole world, the Defendants herein not excepted.

79. The meaning and import of what constitutes a Judgment in rem is vindicated by the provisions of Section 44 of the *Evidence Act*, Chapter 80 Laws of Kenya.

80. To this end, it suffices to reproduce the said provisions.

81. Same are reproduced as hereunder;

44. Judgments in rem

- (1) A final judgment, order or decree of a competent court which confers upon or takes away from any person any legal character, or which declares any person to be entitled to any such character, or to be entitled to any specific thing, not as against any specified person but absolutely, is admissible when the existence of any such legal character, or the title of any such person to any such thing, is admissible.
- (2) Such judgment, order or decree is conclusive proof—
 - (a) that any legal character which it confers accrued at the time when such judgment, order or decree came into operation;
 - (b) that any legal character to which it declares any such person to be entitled accrued to that person at the time when such judgment, order or decree declares it to have accrued to that person;
 - (c) that any legal character which it takes away from any such person ceased at the time from which such judgment, order or decree declared that it had ceased or should cease; (d) that anything to which it declares any person to be so entitled was the property of that person at the time from which such judgment,

82. Additionally, it is also important to recall that PW1 also testified and tendered evidence that there was another suit wherein the ownership of the suit property herein was contested between Precast Portal Structures Ltd v Riccardo Lizer & 3 Others.



83. To this end, PW1 referenced Nairobi HCC No. 596 of 2004. Furthermore, it is also important to posit that the pleadings, documents and ultimately the Deed of settlement in respect of the said suit were tendered and produced before the court.
84. It is not lost on this court that the suit under reference, namely, Nairobi HCC No. 596 of 2004; was concluded/settled vide a Deed of settlement and which Deed of settlement was thereafter adopted and constituted as a decree of the court.
85. Suffice it to state that the Deed of settlement which was duly adopted by the court and thus constitutes a Judgment, has never been impugned and/or set aside.
86. Yet again, it is expedient to underscore that the questions pertaining ownership of the suit property was canvassed and determined in another suit. In this regard, if the 1st Defendant was convicted that same [1st Defendant] had/has a lawful stake in the suit property, then it behooved the 1st Defendant to take appropriate steps to challenge the various court decisions and judgments that impact on and concerns the suit property.
87. Be that as it may, there's no gainsaying that the 1st Defendant herein has neither undertaken any steps to impugn the decisions including the orders of mandamus which were issued vide Nairobi HCC Misc. JR No. 169 of 2017.
88. Flowing from the analysis adverted to in the preceding paragraphs, it is my finding and holding that the Plaintiff has indeed proven her claim to the suit property. In this regard, my answer to issue number one [1] is to the effect that the Plaintiff is the lawful and legitimate proprietor of the suit property.

Issue Number 2:

Whether the 1st Defendant has any Lawful rights and/or interest over and in respect of the suit property or otherwise.

89. The 1st Defendant also laid a claim to and in respect of the suit property. According to the 1st Defendant, the suit property was lawfully allocated to and in her favor vide letter of allotment dated the 1st April 2004.
90. Moreover, it was contended that subsequent to being allocated/issued with a Letter of allotment, the 1st Defendant complied with the terms of the letter of allotment culminating into the issuance of [sic] a certificate of lease. To this end, the 1st Defendant filed a list and bundle of documents including a copy of the letter of allotment, the lease instrument and the certificate of title dated the 3rd December 2015.
91. Be that as it may, it is important to recall that though the 1st Defendant duly entered appearance, file statement of defense and counterclaim and list and bundle of documents, the 1st Defendant however, neither tendered nor adduced any evidence.
92. Arising from the foregoing, it is apposite to state and highlight that the documents that were filed by and on behalf of the 1st Defendant have no probative value. For good measure, documents filed before the court can only be deployed and utilized by a court of law once same [documents] are duly tendered and produced/admitted before the court.
93. Secondly, even though the 1st Defendant contended that same [1st Defendant] was lawfully issued with a later of allotment and thereafter same complied with the terms thereof, there is no gainsaying that the 1st Defendant neither tendered nor produced any evidence pertaining to and concerning acceptance of the letter of allotment or at all.



94. Moreover, the 1st Defendant also did not tender any evidence to demonstrate payments of the stand premium and the attendant statutory levies highlighted at the foot of the letter of allotment.
95. It is important to highlight and underscore that Letter of allotment, like the one adverted to by the 1st Defendant, is only an offer. To this end, it behooves the allottee, the 1st Defendant not excepted, to accept the terms thereof and thereafter to make the requisite payments, albeit within the prescribed timelines.
96. Where the terms of a letter of allotment are neither accepted nor complied with within the prescribed timelines, the terms thereunder lapse and/or become extinguished. In this regard, the letter of allotment ceases to have any legal effect or at all.
97. Additionally, there is no gainsaying that a letter of allotment by and of itself, cannot confer any legal rights and/or interests to land. Worse still, where the letter of allotment lapses, [prior to the terms thereof being complied with], then same cannot underpin the issuance of any certificate of title or at all.
98. The law as pertains to what happens to a letter of allotment whose terms are neither complied with and/or adhered to is now settled. The Supreme court of Kenya [the apex court] in the case of *Torino Enterprises Limited versus Attorney General (Petition 5 (E006) of 2022) [2023] KESC 79 (KLR) (22 September 2023) (Judgment)*, stated and held 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 Moiyo 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].
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.

99. Simply put, the moment the 1st Defendant did not comply with and/or adhere to the terms of the letter of allotment which has been adverted to, same [letters of allotment] lapsed and became extinct. Same died a natural death and was thus incapable of being deployed to generate [sic] the lease instrument and the consequential certificate of lease in favor of the 1st Defendant.
100. Other than the fact that the 1st Defendant did not tender and/or produce evidence of compliance with the terms of the letter of allotment and thus same [letters of allotment] lapsed, there is yet another perspective that merits discussion.
101. The perspective under reference touches on and concerns whether the letter of allotment dated the 1st April 2004, attached to any existing land or otherwise. Instructively, a letters of allotment can only issue and or be issued in respect of an existing Plot or parcel of land.
102. Furthermore, prior to an or before the issuance of a letter of allotment, it behooved the commissioner of lands [now defunct] to ascertain and authenticate whether the land intended to be allocated is available or otherwise. In any event, there is no gainsaying that the commissioner of lands [now defunct] could only allocate unalienated government land and not otherwise.
103. The question that does arise is whether or not the suit property which allegedly being allocated to the 1st Defendant on the basis of [sic] the letter of allotment dated the 1st April 2004 was unalienated government land or otherwise.
104. Suffice it to state that evidence abound to demonstrate that the suit property was private land. In particular, the suit property was a sub-division of L.R No. 9953, which was sub-divided into ten [10] plots/portions. Further and in addition, the suit property, already had a certificate of title which was issued on the 5th January 2004.
105. Certainly, the suit property was not available for allocation and or alienation vide the letter of allotment dated the 1st April 2004. In this regard, there is no gainsaying that the letter of allotment dated the 1st April 2004 did not attach to any existing land or at all. The impugned letter of allotment was a paper transaction incapable of conveying any interests or rights to land, let alone the suit property.
106. To buttress the foregoing exposition of the law, it is imperative to adopt and reiterate the holding in the case of Benja Properties Limited v Syedna Mohammed Burhannudin Sahed & 4 others [2015] eKLR, where the Court Appeal had occasion to highlight the legal position as hereunder;
 25. In arriving at our decision, we note that an interest in land cannot be allotted, alienated or transferred when the specific parcel of land allotted is not in existence. Allotment of an interest in land is a transaction in rem attaching to and running with a specific parcel of land. In the instant case, the allotment by the Commissioner of Land to the original allottees did not attach in rem to any land since there was no parcel upon which the allotment could attach. What the 5th respondent, the appellant and the original allottees did was to engage in paper transactions without a parcel of land upon which any interest in land would attach and vest – it was paper transactions without any parcel of land as its substratum.
107. Moreover, it is also important to reference the holding in the case of Philemon L. Wambia v Gaitano Lusitsa Mukofu & 2 others [2019] eKLR; where the Court of Appeal re-visited the same Legal issue.
108. For coherence, Court stated as hereunder;



36. On our part, we have considered the evidence on record on the two letters of allotment. The evidence on record shows that the first allotment to the suit property was to Mr. Joseph Muturi Muthurania. In *Benja Properties Limited -v- Syedna Mohammed Burhannudin Sahed & 4 others* [2015] eKLR, this Court stated that an allotment of an interest in land is a transaction in rem attaching to and running with a specific parcel of land.
37. In the instant case, the second letter of allotment to the appellant did not attach in rem to any land since there was no parcel upon which the allotment could attach. The first allotment to Mr. Joseph Muturi Muthurania effectively made the suit property unavailable for allotment to the appellant the more when the first allottee had fulfilled the terms and conditions of the allotment.
109. Before departing from this issue, there is one more thing that is important and deserving of mention. The 1st Defendant contends that same [1st Defendant] was issued with a letter of allotment dated the 1st April 2004 over and in respect over and in respect to the suit property. Nevertheless, it is not lost on this court that the 1st Defendant did not tender and/or produced any evidence of an application for the allotment of the suit property or any other property within the city of Nairobi.
110. It is important to state and outline that though the commissioner of land [now defunct] had circumscribed mandate to allocate Town plots, however the process governing the allocation/ alienation of Town plots was/is prescribed vide the provisions of Sections 12, 13 and 14 of the Government *Land Act*, Chapter 280 Laws of Kenya, now repelled.
111. To my mind, it was incumbent upon the 1st Defendant herein to demonstrate how same [1st Defendant] discovered the existence/ availability of the suit plot and the process attendant to the application for allocation, if at all.
112. Pertinently, the process and procedure that governs the allocation/alienation of Town plots was elaborated upon by the Court of Appeal in the case of *Tarabana Company Limited v Sehmi & 7 others* (Civil Appeal 463 of 2019) [2021] KECA 76 (KLR) (8 October 2021) (Judgment), where the court stated thus;
38. The prescribed manner of disposing town plots is provided under Sections 12, 13 and 14 and emphasize on the due process for allocation of government land and sale by auction. Section 12 of the said GLA provides that: Leases of town plots shall, unless the President otherwise orders in any particular case or cases, be sold by auction.”
39. Section 13 of the GLA further provides that the place and time of the auction/sale shall be notified in the Gazette not less than four weeks nor more than three months before the day of sale. Section 14 provides that the terms and conditions of sale by auction should be read out to the bidders before commencing the sale.
40. No evidence was placed before the trial court to prove that this process was followed and that it was what culminated with the title to the suit property being issued to the 4th Respondent. The director of the 4th Respondent, Mr. Martin Njuguna told the trial court that the 4th Respondent applied for allocation of the suit property to the Commissioner of Lands in 2009. He however did not avail a copy of the said application. He did not allege that he purchased the suit property in an auction. It is evident that the manner in which he obtained title to the suit property is strange to the process provided by statute. It therefore follows that due process as prescribed in the law was not followed when the title to the suit property was issued to the 4th Respondent, and that the issuance of the suit property to the 4th Respondent was irregular.



113. Having found and held that the letter of allotment dated the 1st April 2004 lapsed before the terms thereof could be complied with; related to a non-existent parcel of land; and was riddled with illegalities, the question that comes to the fore is whether the certificate of title relied upon by the 1st Defendant is lawful and valid.
114. There is no gainsaying that for a certificate of title to hold sway, the owner/bearer of such certificate of title must demonstrate the legality of the process underpinning its issuance/generation.
115. However, in the instant case, all that the 1st Defendant has is a certificate of title devoid of the requisite transactional documents to underpin same.
116. Suffice it to posit, that such certificate of title of and by itself, cannot vest and/or confer any legal rights and/or interests in favor of the bearer, the 1st Defendant not excepted.
117. The legal position in this respect was highlighted by the Court of Appeal in the case of *Wambui v Mwangi & 3 others* (Civil Appeal 465 of 2019) [2021] KECA 144 (KLR) (19 November 2021) (Judgment), where court observed and stated as hereunder;
64. The jurisprudence relied upon by the appellant and which we find prudent not to replicate are as already highlighted above. We have given due consideration to them in light of the record as assessed herein by us.
- Our take on the same is that the jurisprudential thread running through all of them is that no court of law should sanction and pass as valid any title to property founded on: fraud; deceitfulness; a contrived decree; illegality; nullity; irregularity, unprocedurality or otherwise a product of a corrupt scheme.
118. Arising from the foregoing analysis, my answer to issue number two is fourfold. Firstly, the letter of allotment dated the 1st April 2004 lapsed and was rendered extinct by effluxion of time.
119. Secondly, the impugned letter of allotment related to no existing parcel of land/plot. For good measure, the property that was highlighted at the foot of the letter of allotment was private land belonging to and registered in the name of Pietro Langui [deceased].
120. Thirdly, the certificate of title held by and on behalf of the 1st Defendant was issued contrary to and in contravention of the law. Suffice it to underscore that the impugned certificate of title as issued is invalid.
121. Finally, it is not lost on the court that the legal process adverted to and highlighted vide Sections 12, 13 and 14 of the GLA [now repealed] were neither complied with nor adhered with.
122. The failure to comply with and/or adhere with the mandatory provisions thereunder, would no doubt invalidate the letter of allotment and by extension the certificate of title [if any] arising therefrom.

Issue Number 3

What reliefs; if any, ought to be granted

123. The Plaintiff herein sought for a plethora of reliefs at the foot of the Further amended Plaint dated the 29th November 2016. In particular, the Plaintiff sought for declaratory orders to declare that the suit property lawfully belongs to and comprises the estate of Pietro Langui [now deceased].
124. Whilst discussing issue Number one [1] herein before, the court has found and held that the suit property indeed belonged to and is registered in the name of Pietro Langui, [now deceased]. Having



found and held that the suit property is lawfully registered in the name of the deceased, I encounter no difficulty in declaring that the suit property lawfully belongs to the Plaintiff herein.

125. It is also worthy to recall that the court has also examined the process attendant to the issuance of [sic] the Letter of allotment in favor of the 1st Defendant. Pertinently, the court has taken cognizance of the provisions of Sections 12, 13 and 14 of GLA, Chapter 280 Laws of Kenya and thereafter found and held that the named provisions were neither complied with nor adhered to.
126. Moreover, there is no gainsaying that the court has calibrated upon the fact that what constitutes the suit property was not available for allocation and/or alienation vide letter of allotment dated the 1st April 2004. For good measure, what constitutes the suit property was private land which belonged to and was registered in the name of Pietro Langi [now deceased].
127. Arising from the foregoing, it is apposite to state and underscore that the certificate of title to and in favor of the 1st Defendant was therefore issued in vacuum. In this regard, the impugned certificate of title was and is void, invalid and thus illegal.
128. Other than the foregoing, it is also worthy to point out that by virtue of being the lawful and legitimate owner of the suit property on the basis of being the Legal administratrix of the Estate of the deceased, the Plaintiff is entitled to partake of and benefit from the statutory rights and privileges attendant to ownership.
129. In this regard, it suffices to cite and reference the provisions of Sections 24 and 25 of the [Land Registration Act](#) 2012.
130. Moreover, the scope and extent of the rights of the registered owner of land have been highlighted in the decision in the case of *Mohansons (Kenya) Limited v Registrar of Titles & 2 others* [2017] eKLR, where the court held as hereunder;
 - (18) As held by the Court of Appeal for East Africa held in *Moya Drift Farm Ltd. v. Theuri* (1973) EA 114 a registered proprietor of land is the absolute and indefeasible owner of land and is entitled to take proceedings for trespass and eviction of a trespasser even if he did not have possession of the property. Spry, V-P at 116, considered the effect of section 23 of the Registration of Titles Act and held –

I cannot see how a person could possibly be described as “the absolute and indefeasible owner” of land if he could not cause a trespasser to be evicted. The Act gives a registered proprietor his title on registration and, unless there is any other person lawfully in possession, such as a tenant, I think that title carries with it legal possession: there is nothing in the Act to say or even suggest that his title is imperfect until he has physical possession.”

Sir William Duffus, P. *ibid* at p.117 agreed with Spry, JA as follows:

“In any even I agree with the Vice-President that the fact that the appellant was the registered proprietor as owner in fee simple under the Registration of Titles Act, and as such vested with the absolute and indefeasible ownership of the land, was sufficient to vest legal possession of the land in the appellant and that this possession would be sufficient to support the action of trespass against a trespasser wrongly on the land.”

The third member of the Court, Lutta, JA agreed with the judgment prepared by the Spry, V-P.



131. In my humble view, the Plaintiff herein has established and laid a basis to warrant the grant of the orders of eviction of the 1st Defendant from the suit property and the issuance of a permanent injunction.
132. Quite clearly, the issuance of orders of eviction and permanent injunction would go a long way in vindicating the Plaintiff's rights to an interests over the suit property.
133. Finally, it is worthy to recall that the Plaintiff herein had hitherto filed Judicial Review proceedings vide Nairobi HC Misc. JR No. 169 of 2017. Suffice it to point out that the said matter was heard and determined culminating into the issuance of the orders of mandamus compelling the 2nd Defendant herein to reconstruct the Deed file; Correspondence file and all the attendant records relative to the suit property.
134. Notwithstanding the issuance of the orders under reference, it appears that the 2nd Defendant herein has failed and/or neglected to comply. On the contrary, the 2nd Defendant appears complicit in the disappearance of the records bearing the names of the Plaintiff herein. For coherence, the complicity of the 2nd Defendant is evident in the documentation that same filed before the court despite being privy to and aware of the orders of the court issued vide Nairobi Misc. Jr No. 169 of 2017.
135. Arising from the foregoing, there is no gainsaying that a basis has been laid and proven for the issuance of a mandatory injunction requiring the 2nd Defendant herein to reconstruct the Deed file; Correspondence file and all other records relative to L.R No. 15314/4. For good measure, the records to be reconstructed must accord with the terms of the court order; and in particular, must reflect the name of the Plaintiff as the owner of the suit property.
136. Finally, it is important to recall that the 1st Defendant herein proceeded to and deposited assorted building materials on the suit property. The actions by and on behalf of the 1st Defendant of depositing building materials upon the suit property which lawfully belongs to the Plaintiff herein constituted and amount to trespass. [See the decision of the court of appeal in Church Commissioners for Kenya of the Anglican Church of Kenya v Wayuga (Civil Appeal 111 of 2018) [2024] KECA 1048 (KLR) (16 August 2024) (Judgment)]
137. Having found and held that the activities by and on behalf of the 1st Defendant constitutes trespass, it is imperative to state that the Plaintiff herein is entitled to recompense. The recompense is by an award of general damages for trespass.
138. In this regard, I am persuaded to and do hereby decree an award of Kes.5, 000, 000/= only on account of general damages. [See the decision in Kenya Power & Lighting Company Ltd v Ringera & 2 others (Civil Appeal E247 & E248 of 2020 (Consolidated)) [2022] KECA 104 (KLR) (4 February 2022) (Judgment)].
139. Other than the prayers that were sought by the Plaintiff herein, it is worthy to state that the 1st Defendant has also sought for a plethora of reliefs at the foot of the counterclaim.
140. Nevertheless, whilst discussing issue number two [2], the court found and held that the certificate of title in the name of the 1st Defendant was acquired irregularly and illegally. For good measure, it was held that the impugned certificate of title was void and thus invalid.
141. Flowing from the discussion adverted to whilst discussing issue number two, there is no gainsaying that the 1st Defendant herein did not accrue and/or acquire any lawful rights to the suit property. In this regard, the prayer[s] at the foot of the counterclaim by the 1st Defendant are not only misconceived but legally untenable.



Final Disposition:

142. Having reviewed and considered the thematic issues [details enumerated in the body of the judgment], it must have become apparent that the Plaintiff herein has duly proved her claim as against the Defendants.
143. On the contrary, there is no gainsaying that the 1st Defendant has failed to establish and or demonstrate any lawful rights to and/or interests over the suit property. Suffice it to state that the counterclaim by and on behalf of the 1st Defendant is devoid of merits.
144. In the circumstances, Judgment be and is hereby entered in favor of the Plaintiff in the following terms;
- i. A declaration that the Plaintiff is the bona fide registered owner of the suit property L.R No. 15314/4 and that the 1st Defendant's action of claiming ownership thereof is baseless, unfounded, a breach of the law and an affront to the Plaintiff's proprietary rights over the suit property.
 - ii. A declaration that any title held by the 1st Defendant over the suit property is fraudulent and/ or a fake title and void ab initio and consequently a mandatory order do issue directed at the 2nd defendant or any other relevant government entity tasked with the responsibility of issuing titles registrar of titles/chief land registrar to cancel and/or revoke any such said title held by the 1st Defendant over the suit property (L.R No. 15314/4) or any portion thereof.
 - iii. Permanent injunction restraining the 1st Defendant by itself, its agents, servants, employees and/or proxies from trespassing, excising, entering, fencing, constructing, building, dumping of any building materials or any other materials, erecting nay boards, alienating, selling, encroaching, utilizing and/or interfering in whatsoever manner with the plaintiffs/applicant's quiet possession and ownership of the suit property [L.R No.15314/4]
 - iv. Mandatory injunction be and is hereby issued requiring the 1st Defendant by itself, its agents, servants and/or employees to remove any materials of whatever nature, signboards or any other nuisance placed on the suit property within fourteen (14) days; and in default of which the Plaintiff be at liberty to remove any of the said materials and/or nuisance at the defendant's cost.
 - v. Mandatory order be and is hereby issued requiring the 2nd Defendant do reconstruct the Deed file and/or correspondences file or any other records that may be missing at the lands office Nairobi as held by the said 2nd Defendant in regard to the suit property L.R No. 15314/4 to facilitate the plaintiff's dealing with the suit property in such a legal manner as she shall deem appropriate.
 - vi. General damages be and are hereby awarded in the sum of Kes 5, 000, 000/=Only as against the Defendants herein jointly and/ or severally.
 - vii. The award of General damages shall attract interests at court rates [14%] per annum w.e.f the date of Judgment until payment in full.
 - viii. The counterclaim be and is hereby Dismissed.
 - ix. Costs of this suit and counterclaim be and is hereby awarded to the Plaintiff and same shall be borne by the Defendants jointly and/or severally.
145. It is so ordered



DATED, SIGNED AND DELIVERED AT NAIROBI THIS 27TH DAY OF JANUARY 2025.

OGUTTU MBOYA

JUDGE.

In the presence of

Benson/Mutuma Court Assistant

Mr. JM Njenga for the Plaintiff.

Mr. Kimutai Jinaro h/b for Mr. Kago for the 1st Defendant

N/A for the 2nd Defendant

