



REPUBLIC OF KENYA



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**Njoroge v Kiarie & 63 others (Civil Case 905 of 2013)
[2022] KEELC 15340 (KLR) (21 November 2022) (Judgment)**

Neutral citation: [2022] KEELC 15340 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
CIVIL CASE 905 OF 2013
JO MBOYA, J
NOVEMBER 21, 2022**

BETWEEN

MARGARET WANJIKU NJOROGE PLAINTIFF

AND

**WILSON KIMANI KIARIE 1ST DEFENDANT
JOSEPH WANJINE WACHIRA 2ND DEFENDANT
CHAIRMAN NATIONAL LAND COMMISSION 3RD DEFENDANT
CHIEF LAND REGISTRAR 4TH DEFENDANT
DIRECTOR OF SURVEY 5TH DEFENDANT
COUNTY GOVERNMENT OF KIAMBU 6TH DEFENDANT
JOYCE MURINGO MAINA 7TH DEFENDANT
PETER MAINA KIMONDO 8TH DEFENDANT
FRANCIS GAKUNYI JOHANA 9TH DEFENDANT
IWOMEN OF ELEGANCE 10TH DEFENDANT
GEORGE WANYORO NGIGI 11TH DEFENDANT
RAPHEL KINYANJUI GAKUMO 12TH DEFENDANT
BEATRICE WANJIKU KINYANJUI 13TH DEFENDANT
STEPHEN MWIRIGI KIMANI 14TH DEFENDANT
JOHN KAWI NJUGUNA 15TH DEFENDANT
MARTIN MBOCI MUGWIMI 16TH DEFENDANT
TERESIA WANGUI KIARIE 17TH DEFENDANT**



WINNIE WANJIKU KAMAU	18 TH DEFENDANT
JAMES MUIRURI KARIUKI	19 TH DEFENDANT
REGINAH WAMBUI KIMEMIA	20 TH DEFENDANT
BENSON NDAMBUKI KANG'ETHE	21 ST DEFENDANT
ASSUMPTA WANJIRU KIARIE	22 ND DEFENDANT
PETER MAINA MWANGI	23 RD DEFENDANT
JOHN NJIHIA KIMANI	24 TH DEFENDANT
EUNICE MUTHONI GICHAKA	25 TH DEFENDANT
SAMUEL KANJA KIWUWU	26 TH DEFENDANT
RICHARD MUEMA MUSUI	27 TH DEFENDANT
GERALD GITHINJI WAITHAKA	28 TH DEFENDANT
ALICE WANJIKU IRUNGU	29 TH DEFENDANT
STEPHEN WAITHAKA KAMWANA	30 TH DEFENDANT
MARY MUTHONI MACHARIA	31 ST DEFENDANT
EUNICA WAMBUI WACHIRA	32 ND DEFENDANT
PETER NJOROGE KURIA	33 RD DEFENDANT
GERALD NDERITU MWANGI	34 TH DEFENDANT
EMMAH NDUKU NDAKA	35 TH DEFENDANT
ALI BALAJA WOLDE	36 TH DEFENDANT
GICHARU MUIRURI	37 TH DEFENDANT
REGINA WAIRIMU RURENYA	38 TH DEFENDANT
MUKIRI UNITED SELF-HELP GROUP	39 TH DEFENDANT
PATRICK MUNDIA MURIUKI	40 TH DEFENDANT
STEPHEN MICHEMI M.BIRICHI	41 ST DEFENDANT
AUL MURIGI WAINAINA	42 ND DEFENDANT
ISAAC MACHARIA KIRAGU	43 RD DEFENDANT
PETER WARUINGI KINJA	44 TH DEFENDANT
LSAMUEL KAMANDE GITAU	45 TH DEFENDANT
PETER NJUGUNA MAWURA	46 TH DEFENDANT
STEPHEN MWANGI NJUGUNA	47 TH DEFENDANT
MARY WANJIKU NDUNGU	48 TH DEFENDANT
EUNICE MUTHONT MWAURA	49 TH DEFENDANT



GICHARU MUIRUI	50 TH DEFENDANT
FLASHIA KARURA GOCO	51 ST DEFENDANT
MERCY WANJIKU NDIRANGU	52 ND DEFENDANT
CHARITY WANGARI MUKOMA	53 RD DEFENDANT
ROSE WANGUI NDERITU	54 TH DEFENDANT
JAMES MWANGI NJOROGE	55 TH DEFENDANT
PATRICK NYAGA MUGWIMI	56 TH DEFENDANT
IRENE WANGUI MURIGI	57 TH DEFENDANT
JANE WANJIRU NJOROGE	58 TH DEFENDANT
GEORGE W.WANJIRU	59 TH DEFENDANT
DOMINIC MUTINDA NTHUKA	60 TH DEFENDANT
JOSEPH MWANGI CHEGE	61 ST DEFENDANT
SAMUEL MBURU NDUNGU	62 ND DEFENDANT
STJAMES KAMANDE MWANGI	63 RD DEFENDANT
JOHN MWANGI GATHANA	64 TH DEFENDANT

JUDGMENT

Introduction and Background

1. Vide the Amended Plaint dated the 20th November 2018, the Plaintiff has approached the Honourable Court seeking for the following Reliefs;
 - i. A Declaration that the Plaintiff is the Bona Fide Lease owner of the Land Known as L.R No. 4953/3727, situated in Thika through a Letter of allotment dated the 28th of November 1996 with Ref number 23136/XLI and she be at liberty to pay the balance of the amount requested in the said letter and the 3rd and 4th Defendants do issue her with a Fresh Grant.
 - ii. An Order of Permanent Injunction restraining the Defendants from subdividing, alienating and or selling the land parcel L.R No. 4953/3727 situated in Thika or any resultant sub-division thereof.
 - iii. An Order that the 3rd and 4th Defendants do rectify the Title issued to the 1st and 2nd Defendants by cancellation of the registration of the same and/or the Honourable Court do issue an order to quash the decision of the Chief Land Registrar and the Director of Survey of issuing Grants dated the 4h of August 2000 and on the 23rd of December 2014, an order for Cancellation of Grant issued and Permanent Injunction restraining the Chief Land Registrar and the Director of Survey from issuing any further Certificate of Title of the suit Property herein or any sub-division thereof.



- iv. An Order that the 1st and 2nd Defendants Surrender the Title for L.R No.4953/3727 situated in Thika or any subsequent subdivision thereof for purposes of cancellation and in default, the 4th Defendant to proceed with the said cancellation without the said Titles.
 - v. An Order that the 1st , 2nd , 4th and 7th to 65th Defendants stop interfering with the Plaintiff's quiet enjoyment of the Property and they compelled to remove any Structures or Buildings erected on Land Parcel known as L.R No. 4953/3727 situated in Thika or any subsequent subdivision forthwith and in default, the Plaintiff to have the same demolished at their cost under the supervision of the OCS Thika/Makongeni Police Station who is to provide Security.
 - vi. General damages.
 - vii. Cost and Interests on (vi) above at Court rates.
 - viii. Any other Relief that this Honourable Court may deem Fit and Just to grant.
2. Upon being served with the Original Plaint and summons, the Defendants variously entered appearance and filed their respective Statements of Defenses.
 3. Subsequently and upon being served with the Amended Plaint, the Defendants variously filed and served Amended Statement of defense(s), wherein same opposed and controverted the claims contained at the foot of the Amended Plaint.
 4. On the other hand, it is imperative to state that thereafter the Plaintiff herein variously filed Replies to the Amended Statements of Defenses, which were filed by and on behalf of the Defendants. For clarity, the various Replies are dated the 30th May 2019 and same form part and parcel of the Record of the Honourable court.
 5. Subsequently, the pleadings in respect of the subject matter closed and the suit was listed for case conference. Suffice it to point out that the suit herein was thereafter confirmed to be ready and ripe for hearing.
 6. Pursuant to and upon the conclusion of the requisite preliminaries, the subject matter came up for hearing and proceeded on the 13th October 2021, whereupon the Plaintiff opened her testimony in respect of the subject matter. For clarity, the Plaintiff's evidence revolves around the evidence of four witnesses.
 7. Other than the foregoing, the Defendants also called various witnesses in support of the Defense case. For completeness, the Defendants' case gravitate and revolves around the evidence of Three witnesses.

Evidence by the parties:

a. The Plaintiff's Case:

8. The Plaintiff's case gravitates and revolves around the evidence of four (4)witnesses. For clarity, the Plaintiff herein testified as PW1.
9. It was the evidence of the Plaintiff that same applied to the commissioner of land to be allocated a named and designated plot situated within Thika Municipality vide Application letter dated the 21st February 1995.
10. Further, the witness has added that upon the application to be allocated the named/designated plot, the application letter went through various processes and same was duly approved. In this regard, the



- witness added that the commissioner of land thereafter proceeded to and issued a Letter of allotment dated the 28th November 1996 pertaining to the Suit property which same had applied.
11. Further, the witness testified that the Letter of allotment, details in terms of the preceding paragraph, showed and indicated that the Plaintiff was obliged to pay the sum of Kshs.439, 777/= only, on account of inter-alia, Stand Premium and consequential Statutory levies.
 12. On the other hand, the witness added that upon receipt of the letter of allotment same proceeded to and paid part of the amounts which were shown at the foot of the Letter of allotment vide Bankers cheque issued on the 16th April 1997. For clarity, the witness testified that same paid a total of Kshs.50, 000/= only, which amount was duly received and acknowledged by the Office of the Commissioner of Lands.
 13. Other than the foregoing, the witness further testified that same also proceeded to and made further payments of Kshs.10, 000/= only, towards part settlements/liquidation of the amounts that were reflected at the foot of the letter of allotment.
 14. Be that as it may, the witness added that towards the end of the year 2011, same proceeded to the suit property, which had hitherto been allocated unto her with a view to commencing construction thereof. However, the witness further added that when same visited the suit property, she found that the suit property had been invaded and several houses were being constructed thereon.
 15. Further, the witness testified that owing to and as a result of the offensive houses/constructions that were being undertaken over and in respect of the suit property, the witness proceeded to and mounted a Complaint with the Town Clerk, Municipal Council of Thika.
 16. In particular, the witness testified that same sought to authenticate and clarify why the impugned houses were being carried out and undertaken on the suit property, which had lawfully been allocated unto her.
 17. Nevertheless, the witness testified that when she visited the Town Clerk, Municipal Council of Thika, same discovered and established that the 1st and 2nd Defendants had purportedly been issued with a Certificate of Title/Grant over and in respect of L.R No. 4953/3727 (Grant No. 73180).
 18. It was the further testimony of the witness that upon gathering and establishing that the 1st and 2nd Defendants had been issued with a Grant over the suit property, same was constrained to and indeed wrote a Complaint Letter to the Director of Survey whereby she (the witness) sought to establish how the impugned Grant had been issued over and in respect of the suit property.
 19. Besides, the witness added that the Director of Survey thereafter responded to her letter of complaint vide letter dated the 29th March 2012 and in respect of which, the Director of Survey stated/confirmed that upon perusal of the records at the Survey Department, it was found that the named Grant number 73180 was issued and obtained fraudulently.
 20. Other than the foregoing, the witness added that the Director of Survey recommended that the impugned Grant be subjected to Criminal Investigations and in this regard, the witness stated that same was directed to liaise with the Office of the commissioner of Land.
 21. Be that as it may, the witness further testified that she also proceeded to and wrote a letter to the 3rd Defendant herein, whereby same sought the intervention of the 3rd Defendant to enable her find the file relating to L.R No. 4953/3727, which had since gone missing or misplaced.
 22. At any rate, the witness further testified that she also engaged and instructed an advocate to issue and serve a demand notice upon the commissioner of land. In this regard, the witness stated that indeed



- her nominated advocate generated and served the Commissioner of land with a Demand notice dated the 5th June 2012.
23. Besides, the witness also averred that she also instructed her nominated advocates to carryout and conduct a search at the Ministry of Lands with a view to authenticating whether the Grant hitherto issued to the 1st and 2nd Defendants on the 4th August 2000, had been surrendered.
 24. Notwithstanding the foregoing, the witness also testified that same also engaged her Surveyor to write a letter to the Director of Survey seeking to authenticate whether same had indeed prepared a Deed Plan over and in respect L.R No. 4953/3727.
 25. It was the further evidence of the witness that she also proceeded to lodge a criminal Complaint at Thika Police Station, wherein she also recorded a statement.
 26. Suffice it to point out that the witness proceeded and testified that after the lodgment of the Complaint at Thika Police Station, the 1st and 2nd Defendants were duly summoned to appear before the Police. For clarity, the witness added that the 1st and 2nd Defendants also recorded statements with the Police.
 27. Further, the witness testified that same also complaint to the Treasurer , Thika Municipal Council about the deletion and removal of her name from the record of the said Municipal Council, as pertains the rate payments.
 28. In any event, the witness testified that same established that the records pertaining to the suit property at Thika Municipality had been interfered with and altered by the 1st and 2nd Defendants.
 29. Other than the foregoing, the witness added that the Chief Land Registrar wrote and confirmed through DCIO Thika that the Grant number 73180, in respect of L.R No. 4953/3727, was fraudulent and a forgery. For clarity, the witness alluded to the letter dated the 7th May 2015.
 30. Other than the foregoing, the witness testified that she also discovered and established that the Deed Plan which had been used and relied upon to generate the Grant in respect of L.R No. 4953/3727, related to a completely different parcel of land, which was situated in Machakos. In this regard, the witness pointed out that there was a clear-cut case of fraud and forgery on the part of the 1st and 2nd Defendants.
 31. Further, the witness added that various efforts by and on her behalf to have the suit property reverted to her name, have not given forth any positive results.
 32. In any event, the witness further testified that despite her efforts, the suit property namely, L.R No. 4953/3727, still remains registered in the names of the 1st and 2nd Defendants, who have proceeded to and variously sub-divided the suit property.
 33. Besides, the witness has also testified that the 1st and 2nd Defendants have since purported to subdivide the suit property into various portions and thereafter sold the resultant sub-divisions to and in favor of the 7th to the 65th Defendants.
 34. Other than the foregoing, the witness has alluded to her witness statement dated the 20th April 2021 and same sought to adopt and rely on the said witness statement. In this regard, the witness statement was admitted and adopted as the Evidence in Chief of the witness.
 35. On the other hand, the witness also referred to her List and Bundle of documents dated the 20th April 2021 and same sought to adopt and rely on the named Documents.



36. Pursuant to and at the instance of the witness, the named Documents at the foot of the List and Bundle of documents dated the 20th April 2021, were duly admitted and produced as exhibits P1 to P68, respectively.
37. On cross examination, the witness testified that same was allocated the named property which is situated within Thika Municipality. For clarity, the witness admitted that the letter of allotment contained various conditions that same was required to comply with or adhered to.
38. On the other hand, the witness stated that one of the conditions alluded to and contained in the Letter of allotment was that the allottee (the witness) was to accept the letter of allotment within 30 days from the date of issuance of the letter of allotment.
39. Other than the foregoing, the witness also stated that the other conditions related to payments of the Stand Premium and the Ground rents, amounting to Kshs.439, 737/= only.
40. Whilst under further cross examination, the witness stated that she accepted the letter of allotment. However, the witness admitted that she did not produce or avail a copy of the Letter of acceptance to Honourable court.
41. Further, the witness admitted that though she was obliged to pay the named amount contained and reflected at the foot of the Letter of allotment, same had only paid the sum Kshs.50, 000/= Only, which was paid on the 16th April 1997.
42. Besides, the witness stated that the rest of the payments were thereafter paid on the 28th May 2019. Be that as it may, the witness testified that part of her prayer/relief before the Honourable court relates to a request that the 3rd and 4th Defendants be ordered to allow her to pay the balance of the Stand premium and the incidental Statutory levies.
43. Other than the foregoing, the witness added that she is aware that a Certificate of Title/Grant has since been issued to and in favor of the 1st and 2nd Defendants. In any event, the witness has further stated that same is also aware that the suit property has since been divided into various subdivisions.
44. Additionally, the witness stated that the subdivisions has since culminated into titles issued in favor of various persons. In this regard, the witness confirmed that there are 65 beneficiaries who have since accrued and acquired title arising from the suit Property.
45. Whilst under further cross examination, the witness admitted that same did not fully pay the Stand premium reflected and shown at the foot of the letter of allotment that was issued in her favor.
46. Conversely, the witness stated that she is aware that the 1st and 2nd Defendants paid the Stand Premium and the various statutory levies shown at the foot of their Letter of allotment.
47. The witness further added that same is aware that one would be required to complete the payment of the Stand Premium and the statutory levies before same can become the owner of the land.
48. In any event, the witness added that the suit property belonged to the Government of Kenya and that the Government of Kenya required the allottee to make the full payments of the Stand premium before the allottee can lay a claim to and in respect of the land.
49. On cross examination by counsel for the 4th and 5th Defendants, the witness stated that according to the Letter of allotment, same was obligated to pay annual rents in the sum of Kshs.80, 000/= Only.
50. In this regard, the witness added that same paid the sum of Kshs.80, 000/= only, on account of annual rent, only once.



51. Further, the witness admitted that thereafter she did not pay any other amounts/ Monnies on account of annual rent.
52. Other than the foregoing, the witness stated that she only paid a portion of the stand premium, but she did not complete the payments at the foot thereof.
53. In any event, the witness further admitted that despite having been issued with the Letter of allotment in the year 1996, same did not take possession of the suit property at all.
54. It was the further witness testimony that she wrote further letters to the Commissioner of Lands and Chief Land Registrar, but most Letters were never responded to.
55. Notwithstanding the foregoing, the witness stated that the issuance of the Certificate of Title and Grant in respect of the suit property was borne out of collusion between the 1st and 2nd Defendant and the Department of lands. However, the witness added that she did not have any evidence of such collusion.
56. On cross examination by counsel for the 6th Defendant, the witness testified that the Municipal Council of Thika indeed deleted her names from the records pertaining to Rate payers.
57. At any rate, it was the further testimony of the witness that she had hitherto made payments on account of rates to the Municipal Council of Thika and that same was issued with receipts in acknowledgment of the various payments.
58. Be that as it may, the witness admitted and acknowledged that payments of rates does not by itself confer ownership/title to land.
59. The witness further added that the mistake that was done by the County Government of Kiambu relate to the fact that same took away the suit property from her. However, the witness admitted that she did not comply with the terms of the Letter of allotment.
60. Other than the foregoing, the witness stated that she wants the Honourable court to stop the 6th Defendant (County Government of Kiambu) to stop interfering with her property.
61. Notwithstanding the foregoing, the witness admitted and conceded that she is not the one in possession of the suit property.
62. Similarly, the witness also acknowledged that the County Government of Kiambu is also not in possession of the suit property.
63. The second witness called by the Plaintiff was one, Emanuel Karisa Kenga who testified as PW2.
64. According to PW2, same is a Forensic Document Examiner with more than 30 years' experience in Practice.
65. The witness further added that same had worked with the National Police service as a Forensic Document Examiner and in this regard, same is knowledgeable in Forensic Document Examination.
66. On the other hand, the witness added that on the 25th March 2021, same received a Letter of instruction from the Plaintiff's advocates and in respect of which same was invited to carryout and undertake forensic documents examination over and in respect of named documents.
67. Further, the witness added that he was also required to thereafter prepare a Report pertaining to and concerning the outcome/results of the examination of the named documents which had been forwarded unto him.



68. Additionally, the witness testified that same proceeded to and indeed conducted the examination of the named documents and thereafter same proceeded to and prepared a Report dated the 29th March 2021. For completeness, the witness thereafter produced the Report in question as an exhibit. In this regard, the Report by the witness was produced as exhibit P66.
69. On cross examination by counsel for the 1st and 2nd Defendants, the witness pointed out that same received the various Documents and the sample Signatures from the advocate for the Plaintiff.
70. Further, the witness admitted that though some of the signatures that same was called upon to examine and form an opinion on belonged to one Mrs. P Amien, he however did not meet or interact with the said witness.
71. In any event, the witness stated that same was neither aware of whether Mrs P Amien whose signature he was called upon to examine was alive or dead.
72. Additionally, the witness admitted that the said Mrs. P Amien, whose sample signature he was called upon to examine did not appear before him for purposes of taking a sample signature from same.
73. Other than the foregoing, the witness admitted that the Letter of Instruction which was forwarded to same, required same to confirm whether the impugned/questioned signatures had been forged.
74. In any event, the witness admitted that forgery is a serious matter and therefore same would have required serious attention, to be able to ascertain or authenticate same.
75. Besides, the witness stated that though he was called upon to examine and compare the signature of one Mrs P. Anien, he did not call or summon the said Mrs. P Amien to appear before him to confirm whether or not the questioned signatures belonged to her.
76. Be that as it may, the witness added that upon examination and comparison of the questioned signatures, same came to the conclusion that the sample signatures and the questioned signatures were made by the different authors. However, the witness added that same did not know who the different authors were.
77. On cross examination by counsel for the 4th and 5th Defendants, the witness stated that after the examination and comparison of the question signatures as against the sample signatures, same proceeded and prepared a comparison Chart.
78. On cross examination by counsel for the 7th to 46th, 60th and 61st Defendants, the witness testified that upon receipt of the Letter of instruction from the counsel of the Plaintiff, same sought for the original documents/questioned signatures.
79. However, the witness added that despite asking/requesting for the original documents/original questioned signatures, none was availed unto him.
80. Nevertheless, the witness stated that despite using Photocopies of documents and Photocopies of questioned signatures, same was still able to arrive at the conclusions contained at the foot of the Report.
81. The third witness called by the Plaintiff was one John Muhia Kanotha. For clarity, the witness herein testified as PW3 and that same is an Assistant Land Surveyor and that in respect of the subject matter, same indicated that he had recorded a witness statement dated the 7th September 2018.
82. For clarity, the witness added that in the year 1998, same was working as an Assistant Surveyor to the late S. N Wabaru, who instructed him to survey all that piece of land known as L.R No. 4953/3727.



83. It was the further evidence of the witness that upon receipt of such instruction, same proceeded to and carried out the impugned survey over and in respect of the named Property. Besides, the witness added that same thereafter proceeded to and forwarded the survey to the Director of Survey for purposes of checking, approval and authentication.
84. Further, the witness added that the survey which was carried out and conducted by same was for purpose of issuance of a new Grant to and in favor of the Plaintiff herein and not otherwise.
85. Finally, the witness testified that same has never been retained by and on behalf of the 1st and 2nd Defendants to carryout any survey and prepare a Survey Plan pertaining to and concerning the suit property. In this regard, the witness added that if there is any Survey Plan done by himself, then same is a fraud and a forgery.
86. On cross examination by counsel for the 1st and 2nd Defendants, the witness pointed out that same had come to Honourable court to give evidence in the matter in a case where somebody is claiming to have appointed him to survey L.R No. 4953/3727, within Thika Municipality.
87. Be that as it may, the witness has clarified that same was only retained and instructed by the Plaintiff herein to carryout survey and thereafter to prepared a Survey Plan.
88. On the other hand, the witness added that at the time when the Plaintiff engaged and instructed him to carry out the survey and prepare Survey Plan, the Plaintiff had in her possession a Letter of allotment duly issued by the Commissioner of lands.
89. The fourth witness called by the Plaintiff was one John Mwangi Mwanithi. For clarity, same testified as PW4.
90. It was the testimony of the witness herein that same hitherto worked with the Ministry of Lands and Settlements and in particular, that same was attached to the Department of Survey. For completeness, the witness added that same worked with the Ministry of Lands and Settlement up to and including the year 2016.
91. On the other hand, the witness added that in respect of the subject matter, same has recorded a witness statement dated the 7th September 2018. Consequently, the witness sought to adopt and rely on the said witness statement as his Evidence in chief.
92. In particular, the witness added that same perused the records obtaining at the Ministry of Lands and Settlement and that when he perused same, he was surprised that L.R No. 4953/3727, has already been registered.
93. Further, the witness added that no Deed Plan has ever been issued in respect of L.R No. 4953/3727, to facilitate registration of the said property.
94. In any event, the witness added that the Deed Plan number 218497, which is affixed to the purported registration in respect of the suit property was prepared and issued in respect of L.R No. 7340/237, situate in Machakos and not otherwise.
95. In a nutshell, the witness testified that the purported registration of L,R No. 4953/3727 using Deed Plan number 218497 was fraudulent and a forgery. In this regard, the witness contended that the impugned registration ought to be investigated by the Criminal Investigation Department.
96. On cross examination, by counsel for the 1st and 2nd Defendants, the witness pointed out that by the time he recorded his witness statement on the 7th September 2018, no Deed Plan had been prepared or issued.



97. Whilst still under cross examination, the witness referred to the letter dated the 21st November 2013, (Exhibit P26) and the witness thereafter admitted that the said letter confirms that indeed a Deed Plan had been issued in respect of L.R No. 4953/3727.
98. On the other hand, the witness pointed out that the Deed Plan number was 34534 and that same was in favor of the 1st and 2nd Defendants herein.
99. Be that as it may and whilst under further cross examination, the witness admitted that the named Deed Plan which was issued in respect of L.R No 4953/3727, was not a Forgery.
100. For clarity, the witness admitted that the named Deed Plan was duly issued by the concerned Department and same relates to L.R No. 4953/3727.
101. Whilst under further cross examination, the witness acknowledged and admitted that his witness statement and testimony before the Honourable court are at variance with and inconsistent to Exhibit-P26.
102. With the foregoing testimony, the Plaintiff's case was closed.

b. 1st and 2nd defendants case

103. The 1st and 2nd Defendants' case revolves around the evidence of one Wilson Kiarie Kimani, who testified as DW1.
104. It was the testimony of the said witness, that same is a business person based at Thika. For clarity, the witness added that same deals in brokerage and agency business.
105. On the other hand, the witness stated that in respect of the subject matter same recorded a witness statement dated the 19th March 2019. In this regard, the witness sought to adopt and rely on the said witness statement.
106. To this end, the named witness statement was thereafter adopted and admitted as the evidence in chief of the DW1.
107. Other than the foregoing, the witness alluded to a List and Bundle of documents dated the 19th March 2019 and same sought to adopt and produce the named documents therein as Exhibits.
108. Suffice it to point out that the named Documents at the foot of the List dated the 19th March 2019 were thereafter produced and admitted as exhibits D1 to D12, respectively.
109. Additionally, the witness herein also referred to a Further/Supplementary documents which were contained at pages 73 to 78 of the Defendant's bundle of Documents.
110. In this regard, the witness sought to admit the said documents as evidence/ Exhibits before the Honourable court.
111. At the request and instance of the witness, the named Documents were thereafter produced and admitted as exhibits D13 to 16, respectively.
112. On cross examination, by counsel for the 3rd and 4th Defendants, the witness pointed out that the Letter of allotment which was issued in favor of the 2nd Defendant and himself was dated the 28th November 1996.
113. On the other hand, the witness also testified that the Letter of allotment was attached to a Part Development Plan and besides, the Letter of allotment was lawful and legitimate.



114. On cross examination by counsel for the 6th Defendant, the witness stated that the suit property was duly and lawfully allocated to the 2nd Defendant and himself vide letter of allotment dated the 28th November 1996.
115. On the other hand, the witness added that upon the allocation of the suit Property, the 2nd Defendant and himself duly paid the requisite Stand Premium and the requisite Statutory levies amount to Kshs.437, 000/= only, to the Commissioner of lands.
116. Other than the foregoing, the witness further stated that the 2nd Defendant and himself also entered upon and took possession in the year 1997.
117. In any event, the witness has further averred that the 2nd Defendant and himself have been paying Land rates over and in respect of the suit property.
118. On the other hand, the witness added that after compliance with the terms and conditions contained at the foot of the Letter of allotment, the 2nd Defendant and himself were duly issued with the Certificate of Title over and in respect of the suit Property.
119. On cross examination by counsel for the 7th to 46th, 60th and 61st Defendants, the witness admitted that same is conversant with the named Defendants.
120. Further, the witness also added that the named Defendants bought land from the 2nd Defendant and himself. In this regard, the witness clarified that the said Defendants are therefore Purchasers from the 2nd Defendant and himself.
121. It was the further evidence of the witness that at the time when the 7th to 46th, 60th and 61st Defendants bought land from the 2nd Defendant and himself, same were in possession of a valid Letter of allotment.
122. Further the witness added that subsequently, same procured the requisite Certificate of Title, which was issued unto the 2nd Defendant and himself after compliance with the Due process as required by the law.
123. On cross examination by counsel by the Plaintiff, the witness testified that the 2nd Defendant and himself wrote an application Letter to the Commissioner of land and that the application letter was dated the 25th January 1995.
124. At any rate, the witness testified that the letter of allotment in favor of the 2nd Defendant and himself was dated and issued on the 28th November 1996. The witness added that the date of the letter of allotment corresponds with the date of the letter of allotment issued to the Plaintiff.
125. Whilst under further cross examination, the witness stated that the Letter of allotment by the Plaintiff contains an authority or source of the authority to sign the Letter of allotment.
126. It was the further evidence of the witness that neither the 2nd Defendant nor himself retained a Surveyor by the name of John N Kanotha to carryout any survey over and in respect of the suit property and to prepare any Survey Plan.
127. Whilst still under cross examination, the witness testified that same sold a portion of the Suit Property, in the year 2010. However, the witness added that by the time he sold a portion of the suit property, same had not fully paid the stand premium.
128. Nevertheless, the witness testified that same did not use any fraud or forgery to acquire the suit property. In any event, the witness reiterated that the suit property was lawfully allocated, processed and thereafter registered in his name.



129. With the foregoing testimony, the 1st and 2nd Defendants' case was closed.

c. 4th and 5th defendants' case:

130. The 4th and 5th Defendants' case revolves around the evidence of one Robert Juma Simiyu, who testified as DW2.
131. It was the testimony of the said witness that same is currently an Assistant Director Land and Administration at the Ministry of Land, Physical Planning, Housing and Urban Development.
132. Further, the witness also testified that same is also attached to the Headquarters, at Nairobi and that as pertains to the subject matter, same duly recorded a witness statement dated the 29th April 2021.
133. In this respect, the witness herein sought to adopt and rely on the contents of the named witness statement. For clarity, the witness Statement dated the 29th April 2021 was thereafter admitted and constituted as the Evidence in chief of the witness.
134. Other than the foregoing, the witness also referred to a List and Bundle of documents dated the 27th April 2021. For clarity, the witness pointed out that the List in question contained a total of 23 Documents.
135. In the premises, the witness sought to adopt and produce the named Documents as Exhibits. Consequently, the named documents were thereafter admitted and produced as exhibits D17 to D40, respectively.
136. On cross examination by counsel for the 1st and 2nd Defendant, the witness testified that same has since had an occasion to look at the Letter of allotment dated the 28th November 1996.
137. Additionally, the witness has stated that the said Letter of allotment dated the 28th November 1996 was not correctly issued. In any event, the witness has further averred that the said Letter of allotment does not have a PDP Number indicated thereof.
138. Other than the foregoing, the witness also pointed out that the Letter of allotment dated the 28th November 1996, also did not show the commencement date that is, the impugned term when the Lease would commence.
139. Further the witness also stated that there was also an anomaly in respect of the arithmetical computation of the Stand Premium and the incidental levies. In this regard, the witness pointed out that the sum total was not arithmetically correct.
140. Nevertheless, the witness went ahead and referred to another Letter of allotment produced by the Plaintiff and same contended that the said Letter of allotment was the correct one.
141. Be that as it may, the witness pointed out that the said Letter of allotment contained terms and conditions which the allottee was called upon to comply with and adhere to.
142. For clarity, the witness admitted that one of the conditions related to payment of the Stand Premium and the incidental charges within 30 days from the date of issuance of the Letter of allotment.
143. Nevertheless, the witness admitted that despite the conditions shown on the face of the Letter of allotment, same was not aware whether the Plaintiff paid the requisite amounts within the stipulated timeline/duration.
144. On the other hand, the witness has further admitted that same was not aware whether the Plaintiff duly accepted the letter of allotment, if at all, within the named duration.



145. Notwithstanding the foregoing, the witness admitted that there is in existence a Certificate of Title in respect of L.R No. 4953/3727, which bears the names of the 1st and 2nd Defendants.
146. However, the witness has added that the Certificate of Title however looks suspicious and suspect. For clarity, the witness contended that the said Certificate of title does not look like the other ones that same has been seen.
147. Nevertheless, when pressed on, the witness admitted that same is not a Document examiner and would therefore not be in a position to state which Document is genuine or otherwise.
148. As concerns the issue as to whether the Certificate of Title issued in favor of the 1st and 2nd Defendants was genuine, the witness pointed out that same has never worked in the office of the Chief Land Registrar and in particular, the Registration section.
149. At any rate, the witness added that same had attended Honourable court and given the testimony on behalf of the Plaintiff.
150. On cross examination by counsel for the 6th Defendant, the witness herein acknowledged that the power to alienate and allocate Public land is currently vested in the National Land Commission.
151. Nevertheless, the witness added that in the process of alienating and allocating Public Land, it behooves the National Land Commission to seek for an obtain comments from the Local authorities, now defunct, and the County Governments.
152. In respect of the subject matter, the witness further testified that same had a letter dated the 29th January 1996 from the Town Clerk of Thika Municipal. For clarity, the witness added that the letter in question recommended the allocation of the named Plot.
153. It was the further evidence of the witness that the Plaintiff herein was duly allocated the suit property herein and that same proceeded to and made part payment in respect of the allotment.
154. Nevertheless, the witness added that even though the Plaintiff did not conclude the payment within the statutory 30 days, such failure did not extinguish the Plaintiff's rights to and in respect of the allocated property.
155. On cross examination by counsel for the 7th to 46th and 60th and 61st Defendants, the witness herein stated that same was before the Honourable court to testify on behalf of the 4th Defendant.
156. Nevertheless, the witness admitted and acknowledged that the suit Plot/ Property was duly allocated to the 1st and 2nd Defendants.
157. On the other hand, the witness has further added that the letter of allotment dated the 28th November 2011 was in the file.
158. In any event, it was the further testimony of the witness that if any one was to go to the Ministry of Land and to confirm the status of the Letter of allotment, it would be confirmed that the Letter of allotment is authentic and legitimate.
159. Further, the witness also proceeded to state that if any transaction was carried out premised and based on a lawful letter of allotment, such a transaction would be lawful and legitimate. For clarity, the witness further added that any Purchaser of a portion of the suit Property would be deemed a Bona-fide Purchaser.



160. On cross examination by counsel for the Plaintiff, the witness stated that one Mrs. P Amien, was never in charge of allocation of land in Central Province. For clarity, the witness testified that the said officer was in charge of allocation in respect of Rift Valley.
161. Further, the witness has also added that where one officer was in charge of a particular Province, same could not deal/handle files in respect of another Province.
162. Other than the foregoing, the witness testified that the Letter of allotment in favor of the Plaintiff had both the authority number and the PDP Number. In this regard, the witness added that the said Letter of allotment was lawful.
163. Nevertheless, the witness stated that even though the Plaintiff had applied for allocation and was duly allocated the suit plot, same however, did not have evidence that the Plaintiff made the requisite payments, as stipulated at the foot of the Letter dated the 28th November 1996.
164. Besides, the witness also stated that where a Letter of allotment is revoked, there must be a written communication to the allottee. However, in respect of the instant case, there was no such communication to the allottee/Plaintiff.
165. Finally, the witness stated that where there is a Certificate of Title that doesn't have a Letter of allotment, such Certificate of Title would be Fake and Fraudulent.

d. 6th Defendant's case:

166. Though the 6th Defendant filed the requisite Statement of Defense and participated in the proceedings, same however did not call any witness before the Honourable court.
167. Suffice it to state that counsel for the 6th Defendant intimated to the Honourable court that same would not be calling any witness. Consequently, the 6th Defendant's case was duly closed without any witness being called or any Evidence being tendered to that effect.

e. 7th to 46th, 60 and 61st Defendants' case:

168. The named Defendants' called one witness, namely, Joseph Mwangi Chege. For clarity, the witness herein testified as DW3.
169. Other than the foregoing, the witness stated that same is conversant with and knowledgeable of the facts pertaining to the subject matter. In this regard, the witness added that same proceeded to and recorded a witness statement dated the 8th April 2019.
170. For coherence, the witness sought to adopt and rely on the named witness Statement.
171. At the request and instance of the witness, the witness statement dated the 8th April 2019, was duly admitted and constituted as the Evidence in chief of the witness.
172. On the other hand, the witness also alluded to the List and Bundle of documents dated the 8th April 2019 and same sought to adopt and produce the named documents. For clarity, the named documents was thereafter produced as Exhibit D41.
173. On cross examination by counsel for the 1st and 2nd Defendants, the witness herein stated that same bought a portion of the suit property from the 1st and 2nd Defendants in the year 2011.
174. Besides, the witness added that thereafter same proceeded to and built on the portion of the suit property in the year 2012.



175. On the other hand, the witness further testified that at the time when same bought a portion of the suit property, the 1st and 2nd Defendants had a lawful Letter of allotment relating to and in respect of the named Property.
176. Nevertheless, the witness proceeded and stated that same has since resided and lived on the suit Property with his Family from the year 2012 to date.
177. On cross examination by counsel for the 4th and 5th Defendants, the witness herein stated that the Sale Agreement relating to the purchase of a portion of the suit property, was reduced into writing and duly signed by the respective parties. However, the witness added that the said agreement was not made before an Advocate.
178. Other than the foregoing, the witness pointed out that at the time when he bought a portion of the suit property, same (the Property) did not have a Certificate of title.
179. Be that as it may, the witness added that same has variously followed up with the 1st and 2nd Defendant to be issued with a certificate of title, but same has not been issued with the requisite certificate of title.
180. On cross examination by counsel of the 6th Defendant, the witness herein reiterated that same bought a portion of the Suit Property in the year 2011 and thereby same took possession of the suit property in the year 2012.
181. Other than the foregoing, the witness further testified that same only discovered that the suit property had a case in the year 2019.
182. On the other hand, the witness has further added that other than himself, there were other purchasers who have also built on the suit property after same purchased from the 1st and 2nd Defendants.
183. On cross examination by counsel for the Plaintiff, the witness herein stated that the Sale Agreement was entered into on the 10th May 2011.
184. Nevertheless, the witness has added that the said sale agreement was entered into between himself and Mawakin Investments Ltd. However, the witness has stated that he does not know who the Directors of Mawakin Investment Ltd are.
185. Other than the foregoing, the witness similarly reiterated that same entered upon and constructed on the suit Property in the year 2012.
186. With the foregoing testimony, the Defense case on behalf of the 7th to 46th, 60th and 61st Defendant's was duly closed.

Submissions by the parties:

187. At the close of the hearing, the Advocates for the respective Parties agreed to file and exchange written submissions in respect of the subject matter. Consequently, the Honourable court proceeded to and decreed timeline for the filing and exchange of the written submissions.
188. Suffice it to point out that the Plaintiff herein duly filed written submissions dated the 3rd August 2022.
189. On the other hand, the 1st and 2nd Defendants filed written submissions dated the 3rd October 2022, whereas counsel for the 4th and 5th Defendants filed her written submissions on the 13th October 2022.
190. Other than the foregoing, counsel for the 6th Defendant filed written submissions dated the 5th October 2022, whilst counsel for the 7th to 46th, 60th and 61st Defendants filed their written submissions dated the 19th September 2022.



191. For coherence, the respective sets of written submissions, details alluded to in the preceding paragraphs, forms part and parcel of the record of the Honourable court. In this regard, the said submissions shall be duly considered and taken into account in crafting the subject Judgment.

Issues for Determination

192. Having reviewed the Amended Plaintiff dated (sic) the 20th November 2018, together with the various documents attached thereto and having reviewed the Statement of Defense and the various documents attached thereto; and having similarly, reviewed the oral testimony by the Parties and their respective witnesses and finally; having taken into consideration the Written Submissions filed by the Parties, the following issues do arise and are thus germane for Determination;

- i. Whether the Plaintiff was duly allocated the Plot in question and if so, whether the Plaintiff duly complied with the terms of the Letter of allotment.
- ii. What is the Legal effect and consequences of failure to comply with the terms of the Letter of allotment.
- iii. Whether the Plaintiff acquired any Leasehold Interest over and in respect of the suit Property.
- iv. Whether the 1st and 2nd Defendants were duly allocated the suit Property and if so, whether the 1st and 2nd Defendants duly complied with the terms of the Letter of allotment.
- v. Whether the Honourable Court has Jurisdiction to extend time to pay the balance of the Stand Premium and the incidental Statutory levies at the foot of the Letter of allotment dated the 28th November 1996 in favor of the Plaintiff or otherwise.
- vi. Whether the Plaintiff has sufficiently, proved and established Fraud in the allocation, alienation and ultimate registration of the suit property in favor of the 1st and 2nd Defendants.
- vii. Whether the 7th to the 65th Defendants are Bona Fide Purchasers for value without notice of any defect in the title of the 1st and 2nd Defendants.

Analysis and Determination

Issue Number 1, 2 And 3

Whether the Plaintiff was duly allocated the Plot in question and if so, whether the Plaintiff duly complied with the terms of the Letter of allotment.

What is the legal effect and consequences of failure to comply with the terms of the Letter of allotment.

Whether the Plaintiff acquired any Leasehold Interest over and in respect of the suit Property.

193. The Plaintiff herein tendered evidence and contended that same duly applied for allotment of a specific and designated piece of land situate within the Municipality of Thika. For clarity, the Plaintiff tendered in evidence a copy of the application letter dated the 21st February 1995.

194. On the other hand, the Plaintiff further testified that upon applying to be allocated the designated plot, situated within Thika town, the application was variously approved by the relevant Department and thereafter same was escalated to the Commissioner of land.

195. In this regard, the Plaintiff testified that the commissioner of land ultimately issued a Letter of allotment in her favor.



196. For the avoidance of doubt, the Plaintiff proceeded to and produced in evidence a copy of the Letter of allotment dated the 28th November 1996.
197. Nevertheless, despite the fact that the Plaintiff herein was issued with a Letter of allotment, the Plaintiff duly admitted and acknowledged that same was unable to pay the requisite/ Full stand premium and the incidental statutory levies within the stipulated timeline/duration.
198. Having perused the letter of allotment that was issued to and in favor of the Plaintiff, I am convinced that indeed the Plaintiff was lawfully and duly issued with the requisite Letter of allotment.
199. Be that as it may, I must now venture to deal with and address the consequences attendant to and arising from the failure to comply with the prescribed terms and conditions contained in the Letter of allotment.
200. First and foremost, I beg to point out that a Letter of allotment constitutes an offer addressed to the offeree, containing terms and conditions which the offeree/ allottee must comply with and adhere to.
201. In any event, the offeree is obligated to comply with and adhere to the terms of the letter of offer within the stipulated duration or timeline, unless the terms thereof are duly extended or explicitly waived by the offeror.
202. In respect of the instant matter, there is evidence that the Plaintiff neither met nor complied with the terms and conditions of the letter of allotment. For clarity, the Plaintiff neither accepted the terms of the letter of offer nor made the requisite payments within the stipulated 30 days period.
203. Having failed to comply with and or abide by the terms and conditions of the letter of offer, either within the stipulated duration or at all, it is obvious and beyond debate, that the terms of the impugned letter of allotment lapsed and stood extinguished, for all intents and purposes.
204. To the extent, that the terms of the impugned letter of allotment lapsed and stood extinguished, there is therefore no valid Contract existing to and in favor of the Plaintiff that is capable of being acted upon or enforced, either vide Court process or otherwise.
205. To this end, I am fortified by the holding of the Honourable court in the case of *H.H. Dr. Syedna Mohammed Burbannuddin Saheb & 2 Others versus Benja Properties Ltd & 2 Others* [2007] eKLR, where the Court observed as hereunder;

“In any event, the letter of allotment relied upon by the Defendant had itself expired, and was therefore invalid. I do not accept Mr. Kirundi, Counsel for Defendant’s argument, that the expired letter, when acted upon, had been “revived” through conduct. The letter had expired. It was dead. There was nothing to “revive”.

206. Additionally, the implication of a letter of allotment whose terms are not timeously complied with was also discussed in the case of *Mbau Saw Mills Ltd versus Attorney General for and on behalf of the Commissioner of Lands) & 2 others* [2014] eKLR.
207. For coherence, the Honourable court stated and observed as hereunder;

I have considered the evidence on record and the submission of the parties and do find that a letter of allotment was issued to Mr. Joseph K. Mugambi on 21/10/1971 with a condition to accept the offer within 30 days.

He did not do so and thereafter the offer lapsed 30 days after it was made in accordance with the allotment letter. Having failed to accept the offer as stipulated in the letter of allotment



Mr. J.K. Mugambi did not acquire interest in the unsurveyed lorry depot and therefore had no interest to transfer to the plaintiff. This court holds that a letter of allotment does not confer any property rights to a person unless there is acceptance and payment of the stand premium and ground rent. In the letter dated 17/6/1988 which was written about 17 years after the allotment letter was issued, the Commissioner of Lands confirmed that the plot was allocated to Joseph M. Mugambi in 1971 for lorry depot. However, the plot had neither been paid for nor an acceptance of the offer in the allotment letter made. The implication of this letter was that the allottee had not complied with the terms of the allotment letter and therefore the offer had lapsed. The offer having lapsed, the allottee Mr. Joseph M. Mugambi did not have any interest to transfer to the plaintiff and therefore all transactions between the allottee and the plaintiff were a nullity in law.

208. Having found and held that a letter of allotment, whose terms and conditions are neither complied with nor adhered to within the stipulated timeline, stands extinguished, the next question that needs to be addressed and resolved is whether any legal rights and interests can be anchored on such an extinguished letter of offer.
209. In my humble view, it has been held times without number that a letter of allotment can only confer legal and legitimate Rights in favour of the Named Person, once the allottee has duly complied with the terms/conditions thereunder and upon due issuance of the requisite Certificate of title.
210. Consequently, where an allottee has been issued with a letter of allotment, but same has failed, neglected or refused to comply with the terms of the impugned letter of allotment, then no legal rights or interests can be claimed by and on behalf of the defaulting allottee.
211. Without belaboring the point, it is sufficient to take cognizance of the holding in the case of Dr Joseph N.K Arap Ngok Versuss Justice Moijo Ole Keiwua & 5 Others CA No. 60 of 1997 where the court stated and observed as hereunder;

It is trite that such title to landed property can only come into existence after issuance of letter of allotment, meeting the conditions stated in such letter and actual issuance thereafter of title document pursuant to provisions in the Act under which the property is held.

212. In respect of the subject matter, there is no gainsaying that the Plaintiff neither complied with nor adhered to the terms of the Letter of allotment. Consequently, no certificate of title was ever issued in favor of the Plaintiff.
213. To the extent that no certificate of title was ever issued in favor of the plaintiff, the Plaintiff herein cannot now be heard to contend that same is the lawful and legitimate proprietor of the suit property or at all.
214. Suffice it to point out that lawful rights and interests over land, the suit property not excepted, would only arise or accrue upon registration and issuance of the certificate of title. It is only then that Leasehold Interest would have accrued in favour of the Plaintiff, if at all. See the provisions of Section 24 and 25 of the *Land Registration Act*, 2012.
215. In any event, the foregoing position of the law, which is otherwise trite and hackneyed, was underscored by the Honourable Court of Appeal in the case of *Wreck Motor Enterprises vs. Commissioner of Lands*, Civil Appeal No. 71 of 1997, where the court stated and observed as hereunder;

“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 Justice Moiwo ole Keiwua & 4 Others*, Civil Application No. NAI.60 of 1997 (unreported). Sections 23(1) of the Registration of Titles Act reads as follows:-

"Section 23 (1)

The certificate of title issued by the registrar to a purchaser of land upon a transfer or transmission by the proprietor thereof shall be taken by all courts as conclusive evidence that the person named therein as proprietor of the land is the absolute and indefeasible owner thereof, subject to the encumbrances, easements, restrictions and conditions contained therein or endorsed thereon, and the title of that proprietor shall not be subject to challenge, except on the ground of fraud or misinterpretation to which he is proved to be a party."

216. Premised on the foregoing, I come to the conclusion that though the Plaintiff herein was duly and lawfully issued with a letter of allotment, same however, did not acquire or accrue any lawful rights and interests over the suit property, having not been duly issued with Certificate of Title in accordance with the relevant/applicable laws.

Issue Number 4

Whether the 1st and 2nd Defendants were duly allocated the suit Property and if so, whether the 1st and 2nd Defendants duly complied with the terms of the Letter of allotment.

217. Other than the fact that the Plaintiff herein had been issued with a valid and a lawful letter of allotment by the commissioner of land, it is also imperative to note that there was a similar letter of allotment issued by the same office of the commissioner of land and bearing the same date.
218. Though the Plaintiff herein had contended that the letter of allotment issued to and in favor of the 1st and 2nd Defendant was fraudulent, however, no credible evidence was placed before the honourable court to vindicate the said contention or allegation.
219. In any Event, it would be recalled that a witness was called from the Ministry of Lands and same testified as DW2. For clarity, the witness herein was one Robert Juma Simiyu.
220. During cross examination by counsel for the 7th to the 46th, 60th and the 61st Defendants, the said witness testified as hereunder;

"I work at the offices of the 4th Defendant (Chief Land Registrar). I am here because of the 4th Defendant. The plot was allocated to the 1st and 2nd Defendants. The letter of allotment dated the 28th November 1996 was in the file. The file is currently under my custody. If one was to come to the ministry of lands and ask to confirm the status of the letter of allotment it would be confirmed that the letter is authentic. If there was any transaction involving the letter of allotment herein, then the transaction would be lawful and the purchasers would be innocent purchasers."

221. From the foregoing testimony, what becomes apparent and evident is that the suit property was similarly allocated to the 1st and 2nd Defendants.



222. I beg to point out that the reason as to why the same property was allocated to two separate and distinct persons, was never clarified.
223. Nevertheless and to the contrary, the Plaintiff contended that the letter of allotment in favor of the 1st and 2nd Defendants was fraudulent and forgery.
224. On the other hand, the 1st and 2nd Defendants laid a valid claim to the letter of allotment, which was thereafter acted upon culminating into the issuance of a Certificate of title.
225. To my mind, the situation before hand depicts a scenario where two parallel Letters of allotment were issued in respect of the same property and on even date. In this regard, what becomes apparent is a case of two competing Equities.
226. Consequently, I am minded to adopt and reiterate the elaborate and erudite exposition of the law as captured vide the holding in the case of *Gitwany Investment Limited -v- Tajmal Limited & 2 others*, (2006) eKLR, a case whose facts are in pari materia with the instant matter.
227. For coherence, the High Court in a persuasive authority expressed itself as follows:

“Having concluded that LR No. 209/3088 is in fact the same on the ground with LR No. 209/12004, this court is then confronted with really the main issue in this matter. Both Gitwany and the 2nd and 3rd Defendants were issued with title documents by the Commissioner of Lands. Gitwany’s title for L.R. NO. 209/12004 was issued on 24.7.1995 and it is signed by Wilson Gachanja as such Commissioner in the presence of the Registrar of Titles whose name is unclear. The one in the name of Maxtowers and Njage was signed by Sammy Silas Komen Mwaita as Commissioner of Lands on 12.2.2001 in the presence of J.K. Wanjau, Registrar of Titles. The land was then transferred and is presently held in the name of the 1st defendant which transfer was registered against the title on 26.7.2001.

The position as at now is that both Gitwany and Taj Mall claim and in fact have title to the same piece of land. Which title should prevail? The one issued on 24.7.1995 or the one issued on 24.2.2001? I would agree with the submissions by counsel for the 1st Defendant that it is to S.23 (1) of the Registration of Titles Act that this court must turn to. That section reads as follows: -

“The certificate of title issued by the registrar to a purchaser of land upon a transfer or transmission by the proprietor thereof shall be taken by all courts as conclusive evidence that the person named therein as proprietor of the land is the absolute and indefeasible owner thereof, subject to the encumbrances, easements restrictions and conditions contained therein or endorsed thereon, and the title of that proprietor shall not be subject to challenge, except on the ground of fraud or misrepresentation to which he is proved to be a party.”

I have taken the pains in this judgment to set out exactly how each party obtained title. I have also read the submissions by all parties and sadly none has offered any evidence that Gitwany or the 1st Defendant in any way acted fraudulently or that any of them misrepresented any fact and which then led them to obtain fraudulent titles. In fact the entire mess in which those parties find themselves in is the creation of and a matter that must be put squarely at the doorstep of the Commissioner of Lands, the 3rd Party. All documents leading to the issuance of title are not prepared, kept nor issued by any other party other than that office, sometimes in conjunction with the Directorate of Survey. Any change in L.R. No. or in acreage is a matter that is always in the hands of those officers and even if a private person in a professional capacity undertakes those tasks then those offices must always approve and thereafter take responsibility for those actions.....



Having so stated, I must return to s.23 (1) of the Registration of Titles Act. To do so I must now state that the law as regards two conflicting titles was set out in *Dr. Joseph N.K. Ng'ok vs Justice Moiwo Ole Keiwua and 2 others* C.A. No. 60/1997 (Unreported) where the Court of Appeal in an Application under Rule 5(2)(b) of the Court of Appeal Rules stated thus:

“Section 23(1) of the Act gives an absolute and indefeasible title to the owner of the property.

The title to such an owner can only be subject to challenge on grounds of fraud or misrepresentation to which the owner is proved to be a party. Such is the sanctity of title bestowed upon the title holder under the Act. It is our law and law takes precedence over all other alleged equitable rights of title. In fact the Act is meant to give such sanctity of title, otherwise the whole process of registration of titles and the entire system in relation to ownership of property in Kenya would be placed in jeopardy”.

My understanding is therefore that the title given to Gitwany in the first instance and which I have held to be absolute and indefeasible as regards the suit land is the earlier grant and in the words of the Court of Appeal in *Wreck Motors Enterprises vs. commissioner of Lands*, C.A. No. 71/1997 (unreported)” – is the “grant [that] takes priority. The land is alienated already.”

This decision was gain upheld in *Faraj Maharus vs. J.B. Martin glass Industries and 3 others* C.A 130/2003 (unreported). Like equity keeps teaching us, the first in time prevails so that in the event such as this one where, by a mistake that is admitted, the Commissioner of Lands issues two titles in respect of the same parcel for land, then if both are apparently and in the fact to them, issued regularly and procedurally without fraud save for the mistake, then the first in time must prevail. It must prevail because without cancellation of the original title, it retains its sanctity....

What then happens to the second title issued apparently procedurally but subsequent to an earlier valid title? Again my view is that the answer lies in Section 23(1) aforesaid. Whereas the first title cannot be challenged, the second one can be challenged because whereas it exists and even if procedurally issued, or so it appear, it is not absolute nor indefeasible and is relegated to a level of legal disability and the remedy for a party holding it if aggrieved, lies elsewhere.”

228. To my mind, the 1st and 2nd Defendants were similarly allocated the suit property and indeed the allocation thereof was confirmed and indeed authenticated by none other than DW2, being an Employee of the Ministry of Lands and Settlement.
229. Having been issued with the letter of allotment dated the 28th November 1996, the 1st and 2nd Defendant on their part proceeded to and complied with the terms of the Letter of allotment. For clarity, same duly paid the requisite Stand Premium and the consequential statutory levies named at the foot of the letter of allotment.
230. Suffice it to point out that upon the payment of the statutory levies named at the foot of the letter of allotment, the relevant Departments, including the Director of Survey proceeded to and generated inter-alia, the Deed Plan which was used or utilized to prepare the Certificate of title in favor of the 1st and 2nd Defendants.
231. In this respect, it is pertinent to reproduce the salient aspect of the testimony of PW4, whilst under cross examination by counsel for the 1st and 2nd Defendants.
232. For clarity, the relevant portions of the testimony are as hereunder;

“My witness statement is dated the 7th September 2018. By that time no Deed plan had been issued. The letter is dated the 21st November 2013. The letter is exhibit P26. The letter confirms that a Deed plan had been issued. The Deed Plan is number 34534. The Land



in question was L.R No. 4953/3727. The Deed Plan was issued in favor of the 1st and 2nd Defendants. The Statement in the letter relates to the year 2013. The information was gotten from the records at the Survey office.

There was a Deed Plan and the Deed Plan is not a Forgery. It was duly issued by the Department of survey. It relates/concerns the specific plot herein. The plot in question is L.R No. 4953/3727. The statement by me as compared with exhibit P26 are inconsistent and contradictory”.

233. My understanding of the foregoing excerpt by PW4 is to the effect that a valid and legitimate Deed Plan was duly issued and thereafter same was utilized to register the suit property in favor of the 1st and 2nd Defendants.
234. In the premises, the 1st and 2nd Defendants did not only accrued a valid letter of allotment, but same duly complied with the terms of the Letter of Allotment, culminating into the issuance of the requisite Certificate of title.
235. In my humble view, the registration of the suit property in favor of the 1st and 2nd Defendants therefore over shadows any rights or claims, whether Equitable or otherwise, that the Plaintiff would have had over the suit Property.

Issue Number 5

Whether the Honourable Court has Jurisdiction to extend time to pay the balance of the Stand Premium and in the incidental statutory levies at the foot of the Letter of allotment dated the 28th November 1996 in favor of the Plaintiff or otherwise.

236. The Plaintiff herein has sought for a plethora of reliefs at the foot of the amended Plaintiff (sic) dated the 20th November 2018. For the avoidance of doubt, one of the reliefs that the Plaintiff had sought for relates to and concerns extension of time/liberty being granted to the Plaintiff to pay the balance of the amount named at the foot of the letter of allotment and thereafter an order to direct the 3rd and 4th Defendants to issue the Plaintiff with a fresh Grant.
237. To be able to understand the import and tenor of the relief herein, it is appropriate to reproduce the entire of prayer number 1 at the foot of the amended Plaintiff.
238. For convenient same is reproduced as hereunder;
 - i. A Declaration that the Plaintiff is the bona fide lease owner of the land known as L.R No. 4953/3727 situated in Thika through a letter of allotment dated the 28th of November 1996 with Ref number 23136/XLI and she be at liberty to pay the balance of the amount requested in the said letter and the 3rd and 4th Defendants do issue her with a fresh grant.
239. My understanding of the prayer which has been reproduced herein before is to the effect that the Plaintiff is calling upon the honourable court to extend time for making the payments at the foot of the letter of allotment dated the 28th of November 1996.
240. The question that does arise is whether the impugned letter of allotment which the Plaintiff is speaking to, is still alive and valid in the eyes of the law.
241. In my humble view, the letter of allotment which was hitherto issued in favor of the Plaintiff was time bound. For clarity, the time at the foot of the impugned letter of allotment lapsed and same became extinguished.



242. On the face of such extinction, can a court of law purport to extend time or liberty to warrant the payment of what was not paid within the stipulated/ statutory timeline.
243. I am afraid that once the letter of allotment has lapsed and been extinguished, same becomes void and thus incapable of restoration, revival or resuscitation. Simply put, the letter of allotment is Dead.
244. To understand the legal implication of a void act or exercise, one needs to recall and recollect the dictum in the case of *Macfoy vs. United Africa Co. Ltd* [1961] 3 All E.R. 1169, where Lord Denning while delivering the opinion of the Privy Council stated at page 1172 (1) as follows.
245. For clarity, the reverend Judge said;
- “If an act is Void, then it is in law a nullity. It is not only bad, but incurably bad. There is no need for an order of the Court to set it aside. It is automatically null and void without more ado, though it is sometimes convenient to have the Court declare it to be so.
- And every proceeding which is founded on it is also bad and incurably bad. You cannot put something on nothing and expect it to stay there. It will collapse.”
246. The second limb/segment of the prayer which has been reproduced herein before relates to whether this honourable court can direct or order the 3rd Defendant to issue a Fresh Grant, where no Grant had hitherto been issued.
247. For clarity, what the Plaintiff is seeking from the Honourable court is an order to direct the 3rd Defendant (National Land Commission) to allocate the suit property unto her and thereafter proceed to process and Issue the Requisite Certificate of Title.
248. Clearly, the mandate to allocate and alienate public/government land belongs to the National Land Commission in the discharge of her constitutional duty and Jurisdiction. For coherence, such mandate does not belong to this Honourable Court or at all.
249. To vindicate the foregoing observation, it is appropriate to take cognizance of the decision of the Supreme Court in the matter of National Land Commission (2015)eKLR, where the Honourable Court stated and observed as hereunder;
- (222) The *Land Act* defines “alienation” as the sale or other disposal of rights to land, while the NLC Act confers the power of alienation of public land upon the NLC. Thus, the disposal of such land can only be done by the Commission, with the consent of the National or County Government. The NLC, in effect, has been granted the power to sell or dispose of public land, on behalf of the National and County Governments. The National or County Government has to give consent, for such disposal.
- (223) It may be inferred that, the power of alienation of public land is one of the ways through which the NLC administers such land. The requirement of consent to such a transaction, from the National or County Government, is certainly a check-and-balance relationship between the two State organs. The NLC’s function of monitoring the registration of all rights and interests in land, is another mechanism of checking the powers of the body responsible for registration. Section 5(2)(e) of the NLC Act-versus-*the Constitution*’s terms
- (224) Section 5(2)(e) of the NLC Act mandates the Commission to manage and administer all unregistered trust land and unregistered community land



on behalf of County Government. Counsel for the Commission for the Implementation of *the Constitution* submitted that this provision was contrary to the terms of *the Constitution*. In the case, *In Re IIEC*, this Court had held that while exercising its Advisory Opinion jurisdiction, it may undertake the interpretation of *the Constitution*.

250. Additionally, the extent, tenor and scope of the mandate of the 3rd Defendant whilst dealing with allocation and alienation of public land, was also explained vide the holding in the case of *Cordison International (K) Limited v Chairman National Land Commission & 44 Others* [2019] eKLR, where the Honourable Court of Appeal stated and observed as hereunder;

31. Section 12 of the *Land Act* grants the Commission authority to allocate public land on behalf of the national or county governments and section 14 of the Act specifies the steps that the Commission ought to take before it undertakes any such allocation. The Commission has to issue, publish or send a notice of action to the public and interested parties, at least thirty days before offering for allocation a tract or tracts of land.

32. At least thirty days prior to the allocation the Commission should send a notice to the governor in whose county the public land proposed for allocation is located and to the head of the governing body of any administrative subdivision having development control, among others. The notice should then be published in the Kenya Gazette and at least once a week for a period of three weeks and thereafter published in a newspaper of general circulation in the general vicinity of the land being proposed to be offered for allocation.

33. It is therefore clear beyond any peradventure that it is the role of the Commission, and not a county government, to allocate public land. The allocation must however comply with the laid down constitutional and statutory procedure as stated above.

251. Whereas the 3rd Defendant herein is seized and possessed of the jurisdiction and mandate to alienate Public land, the important aspect to take cognizance of ; is whether in the exercise of her mandate, same is subject to the direction and order of any person or body, including the Honourable court.

252. The answer to the foregoing question obtains in the provisions of Article 249(2) of *The Constitution*, 2010.

253. For clarity, the cited provisions provides as hereunder;

249. Objects, authority and funding of commissions and independent offices

(1) The objects of the commissions and the independent offices are to—

- (a) protect the sovereignty of the people;
- (b) secure the observance by all State organs of democratic values and principles; and
- (c) promote constitutionalism.

(2) The commissions and the holders of independent offices—

- (a) are subject only to this Constitution and the law; and



(b) are independent and not subject to direction or control by any person or authority.

254. Lastly, the other aspect that does arise is whether the 3rd and 4th Defendants can issue (sic) a Fresh Grant over and in respect of Private Property. For clarity, it is common ground that indeed the suit property stood alienated and a certificate of title was duly issued to and in favor of the 1st and 2nd Defendants.
255. In my humble view, the relief contained vide prayer 1 at the foot of the amended Plaint, is clearly outside the jurisdiction and scope of this Honourable court. Consequently, the said prayer is not only misconceived and Mischevious but Bad in law.

Issue Number 6

Whether the Plaintiff has sufficiently, proved and established Fraud in the allocation, alienation and ultimate registration of the suit Property in favor of the 1st and 2nd Defendants.

256. In the body of the Amended Plaint, the Plaintiff has duly pleaded and particularized fraud as against the 1st and 2nd Defendants but also against the 3rd, 4th, 5th and 6th Defendants.
257. Having duly and particularly impleaded fraud, what was thereafter required of the Plaintiff was to tender credible and sufficient evidence to prove same. However, despite the contention by the Plaintiff that the issuance of the letter of allotment to and in favor of the 1st and 2nd Defendants was fraudulent and a forgery, the evidence of DW2 (who was an officer from the Ministry of Land), proved beyond doubt that the letter of allotment in favor of the 1st and 2nd Defendant was lawful, authentic and legitimate.
258. To this end, it is worthy to reproduce, yet again, the salient aspect of the evidence of DW2, which had hitherto been reproduced elsewhere herein before.
259. For coherence same are reproduced as hereunder;

“I work at the offices of the 4th Defendant (Chief Land Registrar). I am here because of the 4th Defendant. The plot was allocated to the 1st and 2nd Defendants. The letter of allotment dated the 28th November 1996 was in the file. The file is currently under my custody. If one was to come to the ministry of lands and ask to confirm the status of the letter of allotment it would be confirmed that the letter is authentic. If there was any transaction involving the letter of allotment herein, then the transaction would be lawful and the purchasers would be innocent purchasers.”

260. The other aspect of the fraud and forgery that was adverted to by the Plaintiff touched on and concerned the propriety of the Deed Plan that was used to generate the Certificate of title in favor of the 1st and 2nd Defendants.
261. Be that as it may, the Plaintiff's own witness namely, PW4 conceded and admitted that the impugned Deed Plan was indeed lawful and legitimate.
262. To this end, it is appropriate to reproduce again the salient aspect of the evidence of PW4, while under Cross Examination.
263. For convenience, same are reproduced as hereunder;

“My witness statement is dated the 7th September 2018. By that time no Deed Plan had been issued, the letter is dated the 21st November 2013. The letter is Exhibit P26. The letter



confirms that a deed plan had been issued. The deed plan is number 34534. The land in question was L.R No. 4953/3727. The deed plan was issued in favor of the 1st and 2nd Defendants. The statement in the letter relates to the year 2013. The information was gotten from the records at the survey office. There was a deed plan and the deed plan is not a forgery. It was duly issued by the department of survey. It relates/concerns the specific plot herein. The plot in question is L.R No. 4953/3727. The statement by me as compared with exhibit P26 are inconsistency and contradictory”.

264. My understanding of the evidence that fell from the lips of the two critical witnesses, whose evidence has been reproduced herein before is to the effect that both the letter of allotment, the Deed Plan and the ultimate Certificate of title in favor of the 1st and 2nd Defendants were not only legal and lawful, but also complied with the Due Process.
265. In short, the totality of the evidence placed before the Honourable court fell short of proving and establishing fraud and forgery, upon which the Plaintiff's case was anchored.
266. Suffice it to point out that he/she who impleads fraud and forgery, must be prepared to tender and place before the Honourable court credible evidence to warrant a finding of fraud.
267. Without belaboring the point, I beg to adopt and reiterate the elaborate and succinct observation and holding of the Honourable Court of Appeal in the case of *Kuria Kiarie & 2 others versus Sammy Magera* [2018] eKLR, where the Court stated as hereunder;
25. The next and only other issue is fraud. The law is clear and we take it from the case of *Vijay Morjaria vs Nansingh Madhusingh Darbar & Another* [2000] eKLR, where Tunoi, JA. (as he then was) stated as follows:
- “It is well established that fraud must be specifically pleaded and that particulars of the fraud alleged must be stated on the face of the pleading. The acts alleged to be fraudulent must, of course, be set out, and then it should be stated that these acts were done fraudulently. It is also settled law that fraudulent conduct must be distinctly alleged and distinctly proved, and it is not allowable to leave fraud to be inferred from the facts.” [Emphasis added].
- The same procedure goes for allegations of misrepresentation and illegality. See Order 2 Rule 4 of the *Civil Procedure Rules*.
26. As regards the standard of proof, this Court in the case of *Kinyanjui Kamau vs George Kamau* [2015] eKLR expressed itself as follows;-
- “...It is trite law that any allegations of fraud must be pleaded and strictly proved. See *Ndolo vs Ndolo* (2008) 1 KLR (G & F) 742 wherein the Court stated that: “...We start by saying that it was the respondent who was alleging that the will was a forgery and the burden to prove that allegation lay squarely on him. Since the respondent was making a serious charge of forgery or fraud, the standard of proof required of him was obviously higher than that required in ordinary civil cases, namely proof upon a balance of probabilities; but the burden of proof on the respondent was certainly not one beyond a reasonable doubt as in criminal cases...”...In cases where fraud is alleged, it is not enough to simply infer fraud from the facts.”
268. In a nutshell, I find and hold that the plea of fraud and forgery have neither been established nor proved to the requisite standard or proved at all.



Issue Number 7

Whether the 7th to the 65th Defendants are Bona fide Purchasers for value without notice of any defect in the title of the 1st and 2nd Defendants.

269. The final issue that arises from the pleadings filed by the Parties herein relates to whether or not the 7th to the 65th Defendants are bona fide purchasers for value without notice of any defect in the title of the 1st and 2nd Defendants.
270. According to DW3, the rest of the Defendants, namely the 7th to the 65th Defendants, are persons who bought various portions of the suit property from the 1st and 2nd Defendants.
271. On the other hand, the witness proceeded to and testified that at the time when he and the rests of the Purchasers bought their respective portions out of the suit property, the 1st and 2nd Defendants held a valid letter of allotment.
272. In the premises, it was the position of DW3 that himself together with the rest of purchasers were bona fide purchasers for value without notice of any defect in the title of the 1st and 2nd Defendants.
273. Pursuant to the foregoing, DW3 has therefore invoked and relied upon the Doctrine of Bona fide Purchaser for value, albeit without defect in the title of his predecessor.
274. In any event, even the Plaintiff herein has indeed conceded that the 1st and 2nd Defendants have subdivided the suit property and sold various portions to Innocent Third Parties. In this regard, the contents of paragraph 19 are imperative and paramount.
275. For convenience, the contents of paragraph 19 of the amended Plaintiff are reproduced as hereunder;
- The 1st and 2nd Defendants are still in possession of this illegal title and have gone ahead to deal with the land illegally ,subdividing the same and selling to innocent 3rd parties that is the 7th-65th Defendant's that are bound to suffer greatly from the actions of the 1st and 2nd Defendants.
276. In my humble view, even the Plaintiff herein has conceded and acknowledged that indeed the 7th to 65th Defendant are Innocent Purchasers, which in my humble view is the same as Bona Fide Purchaser .
277. In the premises, it is my finding and holding that the 7th to 65th Defendants fall within the bracket and parameters delineated vide the holding of the Court of appeal in the case of *Mwangi James Njebia versus Janetta Wanjiku Mwangi & another* [2021] eKLR, where the court stated as hereunder;

37. In *Lawrence P. Mukiri Mungai, Attorney of Francis Muroki Mwaura v. Attorney General & 4 Others*, Nairobi Civil Appeal No. 146 of 2014 this Court cited with approval the case of *Katende v. Haridar & Company Ltd* (2008) 2 EA 173, where the Court of Appeal in Uganda held that:-

“For the purposes of this appeal, it suffices to describe a bona fide purchaser as a person who honestly intends to purchase the property offered for sale and does not intend to acquire it wrongly.

For a purchaser to successfully rely on the bona fide doctrine as was held in the case of *Hannington Njuki v William Nyanzi* High Court civil suit number 434 of 1996, must prove that:



1. he holds a certificate of title;
2. he purchased the property in good faith;
3. he had no knowledge of the fraud;
4. he purchased for valuable consideration;
5. the vendors had apparent valid title;
6. he purchased without notice of any fraud; and
7. he was not party to the fraud.”

We nonetheless wish to state that the law, including case law is not static and the above requirements which were crafted over twenty years ago cannot be said to have been cast in stone. We hold the view that (5) above will need to be revisited and the word “apparent” be done away with altogether.

278. Respectfully, I come that the 7th to 65th Defendants are indeed bona fide purchasers for value and thus merits the protection of the Honourable court.

Final Disposition:

279. Having calibrated on all the issues that were enumerated in the body of the Judgment, it must have become evident and apparent that the Plaintiff has neither established nor proved her claim to the requisite standard or threshold.

280. Consequently and in the premises, I find and hold that the Plaintiff’s case is devoid/ bereft of merits. In this regard, the Plaintiff’s suit be and is hereby Dismissed with costs to the Defendants.

281. It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 21ST DAY OF NOVEMBER 2022.

OGUTTU MBOYA,

JUDGE

In the Presence of;

Benson - Court Assistant.

Mr. Onsembe h/b for Mr. Ongegu for the Plaintiff.

Mr. P.K Kamau for the 1st and 2nd Defendants.

Ms. Malozi h/b for Mr. Benson Njagi for the 4th and 5th Defendants.

Mr. Maina h/b for Ms. Cheserek for the 6th Defendant.

Mr. Gerald Magani for the 7th to the 46th, 60th and 61st Defendants.

N/A for the 3rd, 47th to 59th and 62nd to 65th Defendants.

