



**Moseti v Kisii County Government & 2 others (Environment & Land Case 111 of 2015) [2025] KEELC 382 (KLR) (4 February 2025) (Judgment)**

Neutral citation: [2025] KEELC 382 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KISII  
ENVIRONMENT & LAND CASE 111 OF 2015**

**M SILA, J**

**FEBRUARY 4, 2025**

**BETWEEN**

**ALOYS MATAYA MOSETI ..... PLAINTIFF**

**AND**

**KISII COUNTY GOVERNMENT ..... 1<sup>ST</sup> DEFENDANT**

**EXECUTIVE COMMITTEE MEMBER, LANDS, KISII COUNTY  
GOVERNMENT ..... 2<sup>ND</sup> DEFENDANT**

**COUNTY SECRETARY, KISII COUNTY GOVERNMENT ..... 3<sup>RD</sup> DEFENDANT**

**JUDGMENT**

(Suit by plaintiff seeking orders inter alia that his title to the disputed land, is a good title and further that the development therein, a hotel, was duly approved; defendants filing counterclaim inter alia seeking revocation of the title of the plaintiff on the basis that the said title was fraudulently created and that they never approved the development of the plaintiff; defendants asserting that the Part Development Plan displayed by the plaintiff is fake and that the land is set aside as public land for recreation; plaintiff alleging to have applied for the land but having no application letter; plaintiff not producing any proof of payment of stand premium; there also being no evidence of any survey of the land and no survey plan exhibited; purported lease of the plaintiff signed by a person who was not Commissioner of Lands at the time; apparent that the title of the plaintiff is a fake title and the same nullified; plaintiff given 21 days to revert the suit land back to its pre-development status)

1. This suit was commenced through a plaint filed on 24 March 2015. In the plaint, the plaintiff pleaded that on 14 January 1998, he was allocated by the Commissioner of Lands the plot described as unsurveyed Commercial Plot No. 7 – Kisii Municipality and was issued with an allotment letter. He pleaded that he paid the requisite stand premium, that the land was surveyed and a PDP prepared, and the plot was registered as Kisii Municipality/Block III/566 (the suit land). He averred that he was



issued with a Certificate of Lease on 18 June 2008. In November 2013, he sought to develop the plot and he contended that he obtained consent and approval of building plans from the 1<sup>st</sup> defendant, and also obtained an Environmental Impact Assessment Licence (EIA licence) from the National Environment Management Authority (NEMA). He pleaded that pursuant thereto he fenced the property in readiness for construction, and at the time of filing suit, he averred that he had substantially developed the property with a multi-storeyed building intended to operate as a hotel, but which project was yet to be actualized. He pleaded that the defendants were aware of the project and have been supervising its construction and structural development. He averred that on 19 March 2015, the defendants proceeded to demolish a foot bridge, that he had established, which links the suit property to the main road, thus rendering the suit property inaccessible and the project impossible or impracticable. He pleaded that the defendant also fenced off the side of the road leading to the suit property and issued verbal threats to demolish the building, on the allegation that the land was unlawfully acquired and lies in a riparian area. He pleaded that he complained to the Kisii County Security Committee on 20 March 2015. He was however apprehensive that the defendants would take the law into their hands and demolish the premises.

2. The plaintiff thus seeks the following orders :
  - i. Declaration that the plaintiff is the lawful, bona fide and registered owner of LR No. Kisii Municipality/Block III/566 and therefore entitled to right of access to and/or from the suit property, usage, occupation, and development of the same.
  - ii. Permanent injunction restraining the defendants by either themselves, agents, servants and/or anyone claiming under the defendants from entering into, trespassing onto, further destroying the foot bridge, fencing the road of access to and/or from the suit property, demolishing the multi-storey building/hotel standing on, interfering with and/or in any other manner dealing with the suit property or portions thereof save for purposes of conducting the statutory inspections in accordance with the provisions of the Physical Planning Act.
  - iii. General damages for trespass and/or mesne profits.
  - iv. Interest on (iii) above at court rates.
  - v. Costs of the suit.
  - vi. Such further and/or other relief as the court may deem fit and expedient to grant.
3. Together with the plaint, the plaintiff filed an application dated 24 March 2015, for injunction, to have the defendants restrained from interfering with the suit property pending hearing of the suit. The application was compromised with an order of status quo that was recorded on 22 October 2015 before Mutungi J in the following terms :
  1. The parties maintain and observe the present obtaining status quo in possession where the plaintiff remains in possession but does not undertake any development of a permanent nature until the suit is heard and determined.
  2. No party sells, alienates, and/or transfers the suit property until the suit is heard.
  3. Parties comply with Order 11 CPR within the next 60 days and thereafter fixes the matter for pre-trial directions.
  4. The plaintiff's application dated 24/3/2015 is dispensed with and costs will be in the cause.



4. The defendants filed defence and counterclaim on 28 May 2019. They refuted the allegations in the plaint and pleaded that if there was any activity on the suit property the same was being carried out by the National Government and other agencies in an effort to secure riparian land on rivers. They pleaded that the plaintiff's suit is anchored on deception, corruption, manipulation and fraud, inter alia by fraudulently procuring title, effecting registration of the suit property without the requisite minutes, licenses, consents; falsifying documents; illegally constructing on riparian land a multi-storey building; continuing with construction in violation of the court order issued on 22 April 2015; generating fake stamps, signatures and receipts in attempt to pose as an official approval from the County. They asserted that allocation of public land must be accompanied by resolutions, minutes, and attendant consents from the 1<sup>st</sup> defendant which were never done in the instant case. They denied issuing approvals, licenses or consents in respect of the suit property. They pleaded that the plaintiff has not presented the following :
  - a. Certified minutes and resolutions of the Board and Committee of Town Planning allocating the plaintiff land;
  - b. Application letter to the Town Planning Committee for allotment;
  - c. Beacon Certificate;
  - d. Allotment from the Chief Land Register (sic) of the 1<sup>st</sup> defendant;
  - e. Survey Plan from Survey of Kenya;
  - f. Certified Letter to the Commissioner of Lands from the Clerk, Municipality Kisii authorizing issuance of the requisite certificate of unsurvey (sic) plot;
  - g. Certified letter of intent from Commissioner of Lands to Survey of Kenya to issue RIM.
5. They pleaded that failure to follow the above procedure renders any document obtained in respect of the suit property devoid of legality. They pleaded that the alleged approved part development plan dated 5 May 1995 is fake as the same does not appear in the Kisii County Government records and does not have a plan number as required by law. They pleaded that the land where the suit property is located is a recreation open space according to Kisii Town Plan Reference No. 37/71/01 of 1971 and the area has never been replanned to change the status. They pleaded that the plaintiff was once a Mayor of Kisii and is trying to grab public land which is located within the riparian sections of river Nyakomisaro to the detriment of the people of Kisii Town and the County at large. They pleaded that the plaintiff has never sought and obtained authority to build a bridge over river Nyakomisaro and his action of putting up a concrete bridge very close to the Nyambara-Daraja by-pass road is not only structurally impossible but a perilous danger to members of the public. They also pleaded that the plaintiff has not obtained authorization to build structures close to a highway. They contended that the NEMA report is a forgery and that the Commissioner of Lands had no authority to allocate public land which is riparian land without consent from the 1<sup>st</sup> defendant or her predecessor. They pleaded that the plaintiff has filed multiple suits including Judicial Review Application No. 3 of 2019 and ELC Petition No. 3 of 2019. In the counterclaim, they reiterated that the plaintiff's title was fraudulently procured and sought the following orders :
  - a. A declaration that the 1<sup>st</sup> defendant is the registered proprietor of LR No. Recreation 3 (5) Ref No. N37/71/01 of 1971 holding in trust for the citizens of Kisii County.
  - b. A declaration that the plaintiff's actions of grabbing public land are illegal and fraudulent and the resultant illegal title if any was acquired illegally anchored on fraud and is null ab initio.



- c. An order directing the Chief Land Registrar to cancel the title deed if any in the nature of LR No. Kisii Municipality/Block III/566 illegally obtained by the plaintiff.
  - d. A permanent injunction restraining the plaintiff whether by himself, servants, agents and or anyone acting under him from dealing, constructing, alienating, interfering, charging, and or in any way dealing with LR No. Recreation 3 (5) Ref No. N37/71/01 of 1971 illegally and unlawfully christened by the plaintiff as LR NO. Kisii Municipality/Block III/566 situate on riparian land of river Nyakomisaro.
  - e. An order of eviction evicting the plaintiff from LR No. Recreation 3 (5) Ref No. N37/71/01 of 1971 and demolition of any structures erected on the suit property within a period of seven (7) days.
  - f. An order of arrest and subsequent prosecution of any person purporting to illegally rebuild permanent structures on LR No. Recreation 3 (5) Ref No. N37/71/01 of 1971 upon implementation of prayer (d) above.
  - g. Cost and interest at the court rate.
6. A reply to defence and defence to counterclaim was filed where the plaintiff asserted that he obtained title after following all legal procedures. He pleaded that there is no evidence that the bridge he constructed is a danger to the public. He pleaded that he has a competing interest against some of the defendant's employees hence the allegations of the defendants. On the counterclaim he pleaded that the suit land was allocated to him and its allocation as a recreational area amounts to trespass. He pleaded that the counterclaim is time barred pursuant to Section 4 of the Limitation of Actions Act and does not disclose any cause of action and should be dismissed.
7. I need to mention that on 30 April 2019, an application dated 29 April 2019 was filed by the plaintiff, complaining that the defendants have violated the order of status quo by demolishing the perimeter wall to the suit property on 16 April 2019. He also complained that on 26 April 2019, the defendants and their agents demolished the bridge linking the suit property to the main road. The response of the defendants was that it was the plaintiff, who, despite the order of status quo, proceeded to construct a concrete bridge across the river to his premises and also proceeded to develop the premises to completion. The application was however never heard by Mutungi J, who thought that it is a side-show, and he directed that the suit be heard on merits.
8. Hearing commenced on 10 March 2020 before Onyango J, when the plaintiff testified. He relied on a pre-recorded witness statement and also gave oral evidence in court. In his statement he averred that he applied for a plot from Kisii Municipality and he was issued with a letter of allotment in respect of an unsurveyed plot No. 7 Kisii Municipality on 14 January 1998. He stated that he complied with the terms of the letter of allotment including payment of stand premium. Subsequently, the office of the Commissioner of Lands liaised with the Director of Physical Planning and Survey to facilitate preparation of a Part Development Plan (PDP) and the Registry Index Map (RIM). The hitherto unsurveyed plot was then assigned the parcel number Kisii Municipality/Block III/566 and the registration factored in the RIM. He wished to develop the plot and prepared architectural drawings which were approved on 4 November 2013 and 3 December 2013 by the relevant offices. He was also issued with an EIA licence on 22 May 2014. He fenced the plot in readiness for development and later commenced the building of a hotel. On 19 March 2015, the defendants demolished a foot bridge he had constructed, which links the suit property to the main road, and fenced off the side of the road leading to the suit property, on the basis that the suit land is in a riparian area. He stated that he had pumped in more than Kshs. 13 million into the project.



9. In his oral evidence in court, he testified that the hotel on the suit property is now known as Diplozz Hotel. He testified that his building plan was approved by the Ministry of Public Health, Director of Physical Planning and the County Engineer. He testified that the EIA licence authorized him to build his hotel 6 metres from the river bank. He added that when he carried out construction the Town Engineer supervised it to ensure that it was structurally sound. He denied obtaining the title by fraud and stated that he has never received any complaint about his title being improper.
10. He produced various documents to support his case which I will elaborate on later.
11. Cross-examined, he testified that he previously worked at the Post Office and later joined politics in the year 2007 when he was elected Councillor. In 2011 he became Mayor of Kisii Municipality till 2012. He reiterated that he applied for the plot from the Town Clerk, Kisii Municipality, but acknowledged not producing the application letter. He stated that he was not a Councillor at the time he applied for the plot. He stated that he got the plot in 1988. He affirmed that allocation of plots was under the Town Planning and Works Committee and one had to apply before the Committee approved allocation of a plot. The Committee would then discuss the matter. He did not have a letter from the Town Clerk to the Commissioner of Lands telling him that the plot existed. He stated that the Water Resources Management Authority (WRMA) is the entity concerned with management of riparian areas. He testified that he sought approval from WRMA though he did not have documents to that effect. On the development of the hotel, he affirmed that when the suit commenced, the premises was not complete, and he was aware of the order of status quo. He nevertheless completed the hotel and it is now in use. He did not have any document to show that his building plans were approved though he pointed at a receipt that he said was issued to him for approval of the building plans. He was not aware of the forms PPA1 and PPA2. He had a building inspection card which he stated was issued by the Town Planner. He affirmed getting an EIA licence from NEMA and stated that he complied with the terms thereof. He confirmed filing suit against NEMA to stop them from demolishing his concrete fence. He had also been sued by Public Health Officials allegedly for discharging sewage into the river which he asserted was not true. The case was still pending in court.
12. Re-examined he stated that he could not produce the letter applying for the plot as he did not keep a copy of it. He stated that the Town Clerk did write to the Commissioner of Lands that the plot was available but he was not given a copy of the letter. Regarding WRMA he stated that its officials visited his plot and found no issue and that it is the County Government which has been harassing him about the bridge. He stated that he filed a case after the bridge was demolished and he repaired it pursuant to a court order. He pointed at his plans with stamps showing approval and denied forging the stamps. He affirmed that the Public Health office had issued him with a notice to close his hotel because the plan had not been approved but asserted that approval of plans is not the mandate of public health officials. He stated that the court issued an order of injunction to stop the County Health Officials from closing his hotel. He mentioned that NEMA verbally informed him not to carry on construction within 6 metres of the river and that the County officials have no mandate to stop people from interfering with riparian areas. He sued NEMA in a separate suit because its officials came to harass him without identifying themselves and stated that it turned out that they were not from NEMA after all.
13. With the above evidence the plaintiff closed his case.
14. DW-1 was Patrick Achoki, the Director Physical Planning in the County Government of Kisii. He also had a pre-recorded witness statement which he relied upon as his evidence. In it, he mentioned that he has perused the PDP Ref No. KSI/37195/17 dated 20 March 1995 in respect of proposed Commercial Plot No. 7 (attached to the allotment letter of the plaintiff) and formed the opinion



that the plan did not originate from, and was not prepared, by the Department of Physical Planning as they have no record of the plan. He stated that the PDP is not genuine as it has no approved development plan number and it does not indicate who prepared the plan. He stated that procedurally a part development plan (PDP) is prepared upon authority from the Commissioner of Lands, Director of Physical Planning and Minutes of the Town Planning and Works Committee. He added that from the approved Kisii Development Plan, which is Plan Reference No. R37/71/01, the site in dispute is planned as a recreation area and zoned as 3 (5). Regarding the building plans, he stated that the physical planning stamp affixed and signature are not authentic, as there is no record of the plan having been submitted and received in the register in the Department of Physical Planning. He added that the stamps on the plan do not constitute an approval and that approval is given through the form PPA II under the Fifth Schedule of the Physical Planning Act with or without conditions.

15. In court he reiterated that it is his Department which prepares PDPs to facilitate allocation of public land. In this case, his Department did not prepare any PDP and he has no record of such plan. He added that the PDP would be advertised by publishing in the Kenya Gazette and comments invited from the public within 60 days. Upon the plan being approved the allotment letter would be prepared and thereafter the Registry Index Map (RIM) amended. He testified that he is supposed to have the prepared plan of the site as unapproved and a record of the approved plan which he does not have. He pointed out that the PDP of the plaintiff does not identify the person who prepared the plan but only gives the person who drew it i.e the draftsman. He could see that it appeared signed by the Director of Physical Planning and the Commissioner of Lands but it did not have an approval number. He stated that when a PDP lacks such features then it is not authentic. He could not confirm if the stamp on the building plan was from his office but the signature therein was not his. He was not there on 4 November 2013 which is the date in the stamp. He stated that on approval of a building plan the form PPA2 is issued and they remain with a copy of the plan. He had no record of this plan ever having been submitted. He added that plans are supposed to be paid for. He stated that a person whose plan has not been approved is required to restore the land to its original status and if he fails to do so the County Government would demolish the building. He stated that he has no record of replanning of the suit property from the original Kisii Development Plan which indicates the land as a recreational area.
16. Cross-examined, he was asked whether there are other buildings and structures in the area indicated as 'public open space' in the Development Plan of 1971 and he confirmed that they are present and that many people have titles in this area. He stated that there is a process to be followed in amending the Development Plan; the site needs to be replanned through a PDP and he was not aware of any PDP for this site. He stated that survey cannot be done without a PDP. On the NEMA licence he could not tell whether there was any objection. He stated that ordinarily NEMA reports are sent to his Department for comments but he had no record of one in this instance. He acknowledged that they have not raised a dispute that NEMA issued a licence without their participation nor have they filed a complaint with the National Land Commission regarding allocation of land in this area. Neither have they written to the survey office to ask why plot numbers have been given to private developers. He repeated that their concern is that there is no record of approval for replanning of the recreation area.
17. Re-examined, he elaborated that the area is zoned as Zone 3(5) which is a recreation area and he had no record of any replanning of the area.
18. DW-2 was Haron Kenyuru Oyaro, the Municipal Engineer in Kisii Municipality. He has been in the Department since 2016. He outlined the procedure for approval of developments. He stated that the developer is supposed to provide his office with a PPA1 form indicating the nature of the development and its location. He stated that in this instance there was no formal application made. They then enter the application in a register and a staff from the survey office is sent to confirm the existence of the



land and validate the report given by the submitting agency. If it meets the conditions a PPA2 form is issued. The developer will then use the PPA2 form as a registration document to be used at the National Construction Authority, NEMA and other agencies. In the Urban Engineers office, the developer is given an indemnity form which is signed by the developer, the architect and the structural engineer for multi-storey structures, committing to ensure compliance and integrity of the structure. The Engineer issues an inspection card which has all construction phases that are signed step by step to completion. A completion certificate is then issued.

19. Cross-examined, he testified that from the documents in the archives he found all other documents save for the indemnity form. He got the inspection card but he could not confirm the PPA2 form since it is issued from the Physical Planner's office. He affirmed that NEMA would not issue a licence if one does not have the PPA2 form. He affirmed that there would be frequent inspection for construction within the municipality. He was not sure if inspection was done in this instance. He confirmed that an inspection card is issued until construction is complete and the inspectors give comments on their quality check. They keep the record but he could not trace it. He refuted that it was not mere coincidence that the Physical Planning Office and the Public Health Office of the County Government say that they cannot trace documents. On the indemnity form he stated that it is not a statutory requirement but a procedural one required from the County Government. He stated that this is what they are missing but other documents are available. He could not tell if the indemnity form was there at some point and somebody plucked it out.
20. DW-3 was Thomas Bosico Oirere, the Kisii County Public Health Officer. Among his mandate is to scrutinize and recommend plans for approval by the County Plan Approval Committee where he is also a member. He stated that there was no evidence that the plan of the plaintiff was brought to his office. He stated that the rubber stamp purporting to have been affixed by his office has never been owned by their office and is not from their office. He provided sample rubber stamps used before and after the date indicated therein. He stated that when plans are brought to their office for approval, they record them in a register. He availed a copy of the approval register and pointed out that the name of the plaintiff is not there. He added that a plan that is not approved by the public health department is improper. He testified that his Department issued a stop order to stop the development on 3 May 2019 but the order was not obeyed.
21. Cross-examined, he testified that he has 31 years of experience. He was previously working with the National Government before joining the County Government in 2021. He was asked to bring the original register and we adjourned for a week or so to enable him trace it. He could not find it which he attributed to relocation of offices. On the copy produced he pointed out that the plan was allegedly stamped 4 November 2012 by the Public Health Department but there is no entry in the register for this date. He further pointed out that the stamp shows "The County Public Health Office", and elaborated that the County did not exist in 2012. He did not believe that the date 2012 was an error and was meant to be 2013. He could see that the Physical Planning stamp showed the date 4 November 2013 and that of the Town Engineer showed 3 December 2013. He denied that there was a conspiracy against the plaintiff for them to deny that they have no documents when they previously had them. Re-examined he added that 4 November 2012 was a Sunday and their office does not work on Sundays. He mentioned that previously the Departments used to approve individually but upon devolution, they sit as a Committee, insinuating that the approval stamps would need to be for one day for all Departments.
22. With the above evidence the defendants closed their case.
23. I invited counsel to file their submissions, which they did, and I have taken them into account before arriving at my decision.



24. The main issue in this case is whether or not the title of the plaintiff is a good title or whether it was fraudulently created out of land that is public land set aside as a public recreational area. That to me is the main issue. There is of course the other issue regarding the development, and whether or not it was approved, but to me that would be a secondary issue. If it is determined that the suit land was improperly created, it would in fact not matter that the development was approved, as the development would be on public land not allocated to a private individual. If I find that the plot is a genuine plot then we can deal with the question of approval of the development but if I find that the plot is illegal there would be no need to delve into the issue regarding approval of the development.
25. I will straight away proceed to interrogate the legality or otherwise of the title of the plaintiff.
26. It was the assertion of the defendants that the plot in issue was fraudulently acquired and registered, and indeed in their counterclaim, the defendants wish to have this title cancelled. They pointed out in the defence and counterclaim that there is no document indicating that the plaintiff ever applied for this plot, that there are no minutes allocating the plaintiff the suit land, there there is no beacon certificate, no survey plan, no allotment from the Chief Land Registrar of the County, no letter from the Municipal Council to the Commissioner of Land authorizing him to issue the requisite certificates, and no letter from the Commissioner of Lands to Survey of Kenya to issue the RIM. The plaintiff was indeed put on notice early enough that the problem with his title is that it lacks documents to support its creation.
27. In his evidence, the plaintiff stated that he applied for the plot. However, no application letter was produced and there is absolutely no evidence of him applying to be allocated the suit property. He did affirm in cross-examination that he was aware that allocation of plots was discussed by a Committee. He never produced any minutes from the Committee indicating that there was ever any deliberation to allocate him the disputed plot. I am cognizant of the fact that the plaintiff served as a Councillor and a Mayor of Kisii Municipality, and these are documents that he could very well obtain as they would have been under his command and custody. He cannot be heard to say that these documents would be hidden from him when he served as Councillor and/or Mayor. The fact that he has not produced the minutes, despite being challenged to do so, in my view supports the contention of the defendants that there was never any discussion by the predecessor of the 1<sup>st</sup> defendant to allocate the suit plot to the plaintiff.
28. The plaintiff presented an allotment letter that purports to allocate him the suit plot and I have looked at it. It is dated 14 January 1998 and it indicates that an Unsurveyed Commercial Plot No. 7 Kisii Municipality is allocated to the plaintiff. The allotment letter has a space to indicate the plan number but this space is blank and the plan number is not filled. There is supposed to be paid Kshs. 16,330/= through banker's cheque within 30 days of the allotment letter. The plaintiff stated that he paid this money but produced absolutely no evidence. If indeed he paid for it, he would have copies of the banker's cheque that he used to make payment and also have the receipt issued to him to confirm payment. None of either was produced. Again, if he had lost these documents, the copies would be available from the office that issued the allotment letter for such records are indeed kept for posterity. The plaintiff called no witness from the office that issued him with the allotment letter or office that received his payment. There is absolutely no evidence to support his allegation that this allotment letter is authentic and that he indeed made payment as required therein.
29. There is a PDP attached to the allotment letter, but this PDP is disputed. It was disputed in the defence and in the written statement of DW-1 which were supplied to the plaintiff before he testified. Given that the PDP was contested, one would have expected the plaintiff to bring a witness from the office of the National Director of Physical Planning who maintains records of all PDPs that have been approved.



- The plaintiff did not bring any such witness. In his evidence, DW-1 pointed out that the purported PDP has no approval number and it cannot be authentic. There is certainly no approval number and there is nothing that the plaintiff has availed to affirm that indeed this PDP was approved. As I earlier observed, the allotment letter does not indicate the plan number as this section is left blank. There is also no indication of who prepared the PDP as this part of the purported PDP is blank. DW-1 explained that this part of the PDP requires to be filled so that it is known who prepared it. The only conclusion any reasonable person can reach is that the purported PDP attached to the allotment letter and relied upon by the plaintiff is not genuine.
30. I also note that the purported allotment letter was issued in the year 1998. I have already stated that the plaintiff never presented any document to show that he made payment for the allotment letter. He nevertheless produced a lease dated 16 April 2008. He never explained why it took him 10 years to be issued with the alleged lease. The plaintiff did state that the plot was surveyed and he was subsequently issued with a Lease and Certificate of Lease. He however produced no survey plan and no beacon certificate. There is absolutely no evidence of this plot ever being surveyed for purposes of a new registration of title and it is difficult to see how it can be said that the Registry Index Map was properly amended to reflect the suit parcel of land.
  31. Moreover, I have looked keenly at the purported lease. It is allegedly signed on 16 April 2008 by Judith Marilyn Okungu ‘the Commissioner of Lands.’ It is common knowledge that Judith Marilyn Okungu ceased being Commissioner of Lands on 27 July 2007. This was published in the Kenya Gazette, Gazette Notice No. 7752 of 13 August 2007, which informs the public that Zablon Agwata Mabea has been appointed the Commissioner of Lands in place of Judith Marilyn Okungu with effect from 27 July 2007. I do not see how Judith Marilyn Okungu could have signed the purported lease as Commissioner of Lands on 16 April 2008 when she was no longer holding that office. That signature is most likely forged, or if at all Judith Marilyn Okungu signed that lease then she had no capacity to do so for she was no longer Commissioner of Lands. It seems as though when the plaintiff conjured up an idea to prepare a fake lease, he forgot, or overlooked, that Judith Marilyn Okungu was no longer Commissioner of Lands.
  32. The plaintiff did not shake the evidence tendered by DW-1 that the suit property is located in a public recreational area. DW-1 produced the Development Plan for Kisii and it is clear that this land falls in a public recreation zone. The plaintiff produced no evidence of any change of use or any PDP that amended the original Development Plan.
  33. From the foregoing, it is apparent that there was never any lease issued to the plaintiff to the suit land as alleged. The title held by the plaintiff is a fake title. As far as I can see the suit land falls in a public recreation area. The land has never changed from public to private hands; it remains public land. The suit land has in fact never been surveyed for purposes of creating a title out of it. It remains unsurveyed and unregistered public land.
  34. Given the above, it is clear that the plaintiff has no case. His title is a bad title that must be nullified. And having found that his title is null and void there is no point in delving into whether or not the development was approved as I had earlier explained. In essence the plaintiff’s suit has no merit and it is hereby dismissed.
  35. The defendants have a counterclaim. They first , through prayer (a), seek a declaration that the 1<sup>st</sup> defendant is the registered proprietor of LR No. Recreation 3 (5) RefNo. N37/71/01 of 1971 holding in trust for the citizens of Kisii County. As I have explained, the suit land has never been surveyed nor registered. It cannot be described as ‘LR No. Recreation 3 (5) RefNo. N37/71/01 of 1971.’ It is simply public land within Zone 3(5) in the Development Plan Ref No. N37/71/01. In lieu of granting prayer



- (a) as drawn, what I will do, and hereby do, is to issue a declaration that the land where the purported title Kisii Municipality/Block III/566 sits is public land within Zone 3 (5) Kisii County, as noted in the Development Plan Ref No. N37/71/01 and further declare that no valid title has ever been issued in respect of this land, and that the purported title Kisii Municipality/Block III/566 was illegally created, and the said title is hereby nullified. Being public land the land to be administered as prescribed in the Constitution for the benefit of the public.
36. Prayer (b) and (c) in the counterclaim seek more or less an order to declare the plaintiff's title null and void and for its cancellation. I do hereby declare the plaintiff's title to be a nullity ab initio and order the Chief Land Registrar and the Land Registrar, Kisii, to forthwith cancel it and further cancel any register purporting that the title Kisii Municipality/Block III/566 exists. No transactions should take place regarding this purported title Kisii Municipality/Block III/566 save for the cancellation of the title as ordered. In addition, the Director of Surveys is hereby ordered to amend the Registry Index Map so as to remove this title Kisii Municipality/Block III/566 from the Map and the land to be left as described in the Development Plan Ref No. N37/71/01.
37. Prayer (d) more or less seeks an order of permanent injunction to restrain the plaintiff from dealing or utilizing the suit land. This prayer is allowed.
38. Prayer (e) seeks an order of eviction of the plaintiff and for the plaintiff to demolish any structures erected on the suit land within 7 days. The plaintiff had no liberty to develop the plot. Indeed despite being aware of a dispute over the land, and there being an order of status quo, he nevertheless proceeded to complete his development and utilize it as a hotel. When the suit commenced he had not even built to lintel level. It was an act of impunity to complete the hotel and proceed to do business therein despite the order of status quo. I give the plaintiff 21 days to demolish the structures erected therein and restore the land to the manner in which he found it. In default, the 1<sup>st</sup> defendant, through its offices and or agents, is at liberty to demolish the structures, restore the land to the state it previously was, and allow the public to use it as prescribed in the Development Plan. Any costs incurred to be passed on to the plaintiff and the plaintiff to pay the same within 7 days of being informed.
39. There is prayer (f) asking for orders of arrest and prosecution. I need not issue any such order. Nothing stops the defendants from presenting a complaint to the appropriate authorities if they wish to pursue a criminal prosecution. I will therefore not grant prayer (f). The counterclaim otherwise succeeds as elaborated above.
40. Before I close, I observe that the title is charged to Cooperative Bank Limited. The Bank to be served with a copy of this judgment within the next 7 days, by the 1<sup>st</sup> defendant, so that they may be made aware that the security they purport to hold is useless.
41. The last issue is costs. They will follow the event. The plaintiff to pay the costs of the suit and of the counterclaim to the defendants.
42. Judgment accordingly.

**DATED AND DELIVERED THIS 4<sup>TH</sup> DAY OF FEBRUARY 2025**

**JUSTICE MUNYAO SILA**

**JUDGE, ENVIRONMENT AND LAND COURT**

**AT KISII**

Delivered in presence of:

Ms. Bosire for the plaintiff,



Ms. Githinji for the defendants,  
Court Assistant : Michael Oyuko.

