



Wangai & 3 others v Mukonyoro & 3 others (Environment & Land Case E083 of 2021) [2025] KEELC 437 (KLR) (6 February 2025) (Judgment)

Neutral citation: [2025] KEELC 437 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE E083 OF 2021**

**A OMBWAYO, J
FEBRUARY 6, 2025**

BETWEEN

JOSEPH CHEGE WANGAI & 3 OTHERS & 3 OTHERS & 3 OTHERS & 3 OTHERS APPLICANT

AND

KAMANGA MUKONYORO & 3 OTHERS & 3 OTHERS & 3 OTHERS & 3 OTHERS RESPONDENT

JUDGMENT

Introduction

1. The Plaintiffs commenced this suit vide a Plaint dated 24th November, 2021 against the Defendants seeking the following orders:
 - a. A Declaration that the Plaintiffs herein are the lawful owners and/or allottees of NJORO Golf Squatters Phase I Plot Nos. 4, J4, J5, 7, 11, 12, 13, 18, 19, 21, 22,25,27,28,30,33,34,36,37,38,44,49,56,57,66,69,72,78 (residential) njoro golf squatters phase II PLOTNOS.J2,3,8,9,13,15,16,J16,17,19,20,21,25,J25,J28,31,32,33,J33,J34,J35,37,J38,42,48,59,60,61,65,74,75,77,80 (residential) And Njoro Golf Squatters Phase Iii Plot Nos. 6,10,17,23,25,31,37,66,74,87,102 (residential) comprised in the PDP NO R23/98/7 certified by the Director of Physical Planning on the 5th December, 1997 and approved by the Commissioner of Lands on 21st January, 1998.
 - b. A Declaration that the PDP R23/2001/3 was illegally, irregularly, fraudulently and/or unprocedurally obtained hence null and void ab initio.
 - c. An order of Permanent Injunction restraining the Defendants either by themselves, their members, trustees, officials, agents, servants and/or anyone claiming under them from



claiming proprietary rights, evicting, interfering with the Plaintiffs quiet and peaceful occupation and use of their respective parcels of land comprised in the PDP NO R23/98/7 certified by the Director of Physical Planning on the 5th December, 1997 and approved by the Commissioner of Lands on 21st January, 1998. d) Costs

- e) Any other or further relief as may seem (sic) fit to this Honourable court to grant.
2. The 1st Defendant entered appearance and filed their Statement of Defence and Counter claim dated 16th March, 2015 where they denied the allegations in the plaint. They are seeking the following orders in the counterclaim:
 - a. An order of eviction against the Plaintiffs (now Defendants in the counterclaim) from the parcel of land comprised in the PDP R23/2001/3 the property of the 1st Defendants (now Plaintiffs in the counterclaim).
 - b. Permanent injunction restraining the Plaintiffs either by themselves, their agents, servants, employees, hirelings or whosoever from encroaching, entering, trespassing, constructing, cultivating, destroying or doing any act prejudicial to enjoying quiet possession, occupation or ownership of the land parcel comprised in PDP R23/2001/3 the property of the 1st Defendants (Plaintiffs in the counterclaim). c) Costs of the suit.
 3. The 3rd and 4th Defendants filed their Statement of Defence dated 7th June, 2022 and 28th April, 2023 respectively where they denied the allegations in the Plaint.

Plaintiffs' Case

4. Joseph Chege Wangai testified as PW1 where his witness statement dated 24th November, 2001 was adopted as evidence in chief. He produced the Authority as PEX1, Certificate of registration as PEX2, Allotment letter as PEX 3 and a letter dated 26th May, 1992 as PEX 4. It was his testimony that the allotment letter was issued by the government under the County Council. He testified that they made an application on 4th July, 1996 and they got a reply on 29th August, 1996 PEX 5. He testified that they were given a map dated 5th December, 1997 and the PDP PEX 6 with the Ref no. R23/98/7. He testified that it was approved on 7th January, 1998 by the Director of Physical
6. Planning. He further testified that it was approved by Commissioner of Lands on 21st January, 1998. PW1 testified that the plots were for resident properties for Njoro squatters and that their members had 30 acres. He added that the whole area was 100 acres. He went on to testify that there was a group known as freedom fighters including the 1st Defendant who were given 38 plots. He testified that the jua kali also occupied part of the land. He testified that the 1st Defendant had sued them in 437 of 2013 where the case was struck out. He produced the ruling dated 27th September, 2022 as PEX 7. He testified that the suit related to Nakuru CMCC No.773 if 2009. He further produced the decree as PEX8.
7. It was his testimony that the matter was transferred from CMCC to ELC and later dismissed for want of prosecution. He testified that the case was transferred to Nakuru ELC and became NKR ELC 437 of 2013 through Misc application number 180 of 2013. He added that the advocates had agreed to transfer 773 from Magistrate Court to the High court which case was then dismissed for nonattendance. He testified that he filed J.R No. 006 of 2021 which was dismissed. He added that there was no other case. PW1 testified that the physical Planning officer went to the ground where he made a report vide a letter dated 11th December, 2003 which was marked as PMFI 9. He produced the order as PEX-10, receipt at page 86 PEX-11, receipts at page 166 to 170 PEX-12- PEX 16, invoices at pages 176 PEX 17, 177- PEX 18, 178-PEX 19, 181- PEX 20, 182- PEX 21, 183- PEX 22, 185- PEX



23,186- PEX 24, 188 PEX 25, 189- PEX 26, 190- PEX 27, 191- PEX 28, 192- PEX 29, 194PEX 30, 195- PEX 31, 196- PEX 32, 197- PEX 33, 198- PEX 34, 199- PEX35, 200- PEX 36, 201- PEX 37, 202- PEX 38, 203- PEX 39, 204- PEX 40, 205- PEX 41, 206- PEX 42, 207- PEX42, 208- PEX 44, 209- PEX 45, 210- PEX 46, 211- PEX 47, 212- PEX 48, 213- PEX 49, 214- PEX 50, 215- PEX51, 216PEX 52, 217- PEX 53, 218- PEX 54, 220- PEX 55, 221- PEX 56, 222- PEX 57 and 223- PEX 58. He testified that he had a supplementary list filed on 30th November, 2023 where he produced the receipt dated 22nd November, 2023- PEX 59. He testified that they paid the government and that his members were settled on the ground together with their families. He went on to testify that there was Ndege primary school and Secondary school where they have 6 children. He produced the photos as bundle PEX 60 and the photos on pages 102 to 111- PEX 61. He testified that his home being No.22. was not contended. He added that he had 22 and 23 measuring 40X80 each. It was his testimony that they had 30 acres where the others had 15 acres and Jua Kali 30 acres. He produced the PDP No R23/97/1. dated 15th January, 1997 as PEX 62. PW1 testified that the approvals were done on 13th March, 1997 by the District Commissioner of Lands on 4th July, 1997. He testified that they were to put up residential land. He produced the PDP as PMFI 63. He went on to testify that Faith holiness, a school with no students was also in occupation. He testified that the school has been closed for 3 years. He testified that Freedom fighters were known as Uhuru and that they were given 38 plots which they have since constructed. He testified that they complained to the County council. He produced the letter dated 31st January, 2013 which referred to PDP No.86 PEX 64. He added that PDP No. R23/2001/3 was to be withdrawn as per direction in PEX 35 which was after the Director of Physical Planning had visited the ground. He testified that PDP No R23 2001/3 for the Defendant was issued on 1st July, 2004 by the Director and by the Commissioner on 8th October, 2004. He went on to testify that it was not approved by the Commissioner for lands and that they were given approval number 86. He testified that his PDP was approved in 1998 and 1997 while their approval came in 2004. He added that lands had promised to assist in respect of R23/2001/3. He produced the letters as PEX 66 (a) – 66 (b) PEX 66 (c). PW1 testified that they complained and the Commissioner of lands wrote to the District Commissioner PEX 67. He testified that they were told that the person on the ground was to remain on the ground.

8. Upon cross examination by Wanjiru for the 1st and 2nd Defendant, PW1 confirmed that he was a member of Njoro Kiwanja Ndege Welfare. Which was registered in the year 2021. He further confirmed that they got the land in 1996. He stated that he was born on the land which belonged to Golf Club. He further stated that his father used to work with Golf club which was registered in the year 1931. He confirmed that his father was an employee for the whites and that he lived on the land. He added that the land became government land when the whites left. He stated that the government occupied part of the land and added that the government had acquired the whole land. He stated that they lived on the 30 acres which they had been given. He further stated that the 1st Defendant did not work for the white man. He went on to state that they had made the application to the government and added that he did not have it in court. He confirmed that his father died in 1996 and that he made the application and their PDP from the survey of Kenya was certified in the year 5th December, 1997. He added that the allotment letter was by the County Council issued in 1997. He stated that while the PDP was certified in 1998, the allotment letters were in 1997 to individuals and not the Njoro squatters. He stated that they were registered in 2004 and given upto 2012 for the allotment. He admitted that they did not pay for the allotment letters but that they have been paying rates. He stated that he could not recall NKR Misc No. 201 of 2008. PW1 was referred to PEX6 where denied knowing the PDP No. He confirmed that it was not certified nor gazetted. He stated that they had no relationship with Juakali and added that the PDP for Jua Kali was not certified. He went on to state that the PDP for jua kali had no name. He admitted that he did not know how the PDP's were prepared. He further admitted that the letter did not mention Njoro Self Help Group or refer to Kiwanja ya ndege. He confirmed that the



letters referred to ex freedom fighters Uhuru welfare. He admitted that he had no evidence of illegality on the PDP by the 1st Defendant. He further admitted that Kiwanja Ndege and Njoro welfare were not related. He stated that he was a member of Njoro Golf and that they were not the same as Kiwanja ya Ndege. He stated that they had entered the land in 1997 where they constructed and have lived. He denied having told the 1st Defendant to remain with the papers while they remained on the land. He stated that he was summoned to the National Land Commission and added that he was not aware that when Macharia wrote the letter, the 1st Defendant had already obtained allotment letters. He stated that the land belonged to squatters.

9. Upon cross examination by Ademeyon for the 3rd Defendant, he stated that he sued the National Land Commission and that they followed the correct procedure. He stated that they were in possession of the land and that the government decided to settle them on the land. He admitted that they did not apply and that the allotment letter was issued between 1997-1998 to individuals and not the welfare. He stated that they came to court as Uwanja Wa Ndege. He further stated that the letters were given to members of the squatters. PW1 went on to state that the Director of Physical planning did a second PDP when the people were on the ground. He added that the 1st Defendant did not have land on the ground. He stated that the gazette notice did not involve them.
10. Upon cross examination by Kinuthia for the 4th Defendant, PW1 stated that there was no allocation of land to Uwanja ya Ndege. He added that they never made any application. He admitted that they never paid for allotment and that they were given 30 days. He stated that the rates they paid were tax. PW1 was referred to PEX 64 where he stated that he obtained the letter from the clerk's office. He stated that they got the PDP from the surveyor's office in Njoro. He stated that they applied to the Ministry of Lands and the City council.
11. Upon re-examination, he stated that the group was registered in 2021 and the allotment letters issued between 1997- 1998. He stated that the allotment letter indicated the plot number and the phase being allocated. He further stated that other members paid besides him. He added that Jua kali were on the ground but on a different land with a road in between. PW1 was referred to PEX 5 where he stated that the Director applied for allocation and that their PDP was approved by the Commissioner of lands. He stated that the land belonged to squatters. He stated that the National Land Commission summoned him vide a letter dated 6th November, 2001. He was further referred to PEX 66(b) where he stated that the group leader was ex-freedom fighters. He added that the JR case of 2 of 2008 did not involve them. He stated that the gazette notice was by the Physical Planning officer. He further stated that he was given PEX 64 by the public officer. PW1 stated that the allotment was for the Plaintiffs, Ngongangeri was for freedom fighters and Njoro Ngata was for phase 3.
12. John Kagotho Muchohi testified as PW2 where his witness statement dated 24th April, 2023 was adopted as his evidence in chief. He testified that he lived in Kiwanja ya Ndege at Njoro golf squatters and that he owned plot number 13 residential. He testified that he had his allotment letter at page 2 of his bundle from the county counsel of Nakuru. He testified that he applied on 10th June, 1997 and that he has since constructed a semi-permanent house. He testified that he paid application fee of Ksh500 on 19th January, 2007 and rates on 5th November, 2010, 7th September, 2010, 22nd November, 2023 and 11th September, 2018. He testified that he has lived on the land for 25 years.
13. It was his testimony that when they took possession with the jua kali, they had no problems. He testified that in 2001, Mau Mau came and began removing beacons. He testified that PDP No. R23/98/7 was approved on 27th January, 1998 while the PDP R23/2001-3 was approved on 1st July, 2004. PW2 testified that their PDP was in existence and that no government officer came on the ground to check physical possession. He testified that the letter was referred Uhuru Welfare since they were requesting for land. He testified that the group applied for the land in 1996 and that the PDP of 2001 was given



- when they were in occupation. The land had already been allocated by the County council. He testified that they were lawfully allocated by the County Council. He added that the government received the money. He testified that the government were the custodians of documents.
14. Upon cross examination by Wanjiru for the 1st and 2nd Defendant, PW2 confirmed that the PDP had no number and that it was not certified. He stated that his father was a mau mau who worked for the whites. He stated that he was a member of Kiwanja Ndege having joined in the year 2021. He admitted that he got the land as a squatter after having applied. He stated that the letter was with the County Government. It was his testimony that he applied individually. He stated that the allotment letter had no date. He added that he paid since he could not be allowed to pay rates without having paid. He denied that there was a letter from the D.O that stopped development or a letter offering a PDP.
 15. Upon cross examination by Ademeyon, he stated that he had two plots but sold the 2nd plot. He stated that he could not recall whether he made the application through the association. He testified that he was allocated the land by the County government but they were issued with some other letter which they returned. He admitted that he was a squatter on the land.
 16. Upon cross examination by Kinuthia, he confirmed that he was allocated the plot and that the PDP was in existence. He stated that he was shown the plot by the surveyor. He admitted that he did not have evidence of allocation of plot number 13. He confirmed that they were not issued with the title deeds. He admitted that he paid the acceptance fee after 3 years since he did not have money. He went on to state that he complied with the conditions and added that were aware that he had paid. PW2 stated that he started paying rates in the year 2010. He was referred to PEX 5 where he admitted that he had no evidence to show the connection between the government and County Council.
 17. Upon re-examination, he stated that the allotment letter showed that he made the application on 10th June, 1997 and that approval was done on 12th October, 2004 while full approval was on 22nd December, 2004. He stated that if he had not paid, he could not appear in the system. He added that M/s Bosire and others made the application. He further stated that the issue was being dealt with by the Director Land Officer whom they have sued. He added that squatters were identified by them living on the parcel of land. He stated that he was shown the plot by the surveyor of County Council and that they paid for the survey. He stated that the County council allowed them to construct. He stated that his money did not reflect in the government system. He further stated that he did not have any arrears since he had paid until November 2023.
 18. Francis Wainaina testified as PW3 where his statement dated 24th April, 2023 was adopted as his evidence in chief. He testified that he has lived at Njoro Kiwanja ya Ndege since 1965. He testified that he had the allotment letter. He further testified that he bought his second plot from Agnes on 2nd July, 2012. He produced the agreement as PEX 68. He produced the ID's as PEX69 (a) and 69 (b). He testified that he has since lived on the land with his parents and children until the Defendant claimed the land. He testified that in 2003, the ex-freedom fighters came to claim on the land. He added that the ex-freedom fighters were their neighbors' who have occupied 25 acres. He further testified that they have Njoro, Jua kali and approved girls' school and the place is 100 acres. It was his testimony that the county council surveyor showed them the land. He went on to testify that in 2003, the physical planner from the National Government wrote a letter which showed that we were on the ground. He testified that the 1st Defendants were the ex-freedom fighters. He further testified that the PDP was properly done and that all the plots have beacons.
 19. Upon cross examination by Wanjiru, PW3 confirmed that he was born in 1965 on the suit land. He further confirmed that his parents lived on the land as employees of Njoro Golf Club. He added that they were never chased away. He also confirmed that when Golf Club surrendered to Government,



- they had not bought the land. He stated that he paid Kshs.11,000 but that the receipt got lost. He stated that he was to get another one but he was told to look for the receipt or pay afresh. He admitted that he did not have the police abstract. He stated that Agnes sold him the land. He also stated that he personally made the application.
20. Upon cross examination by Ademeyon, PW3 confirmed that he knew John Ngotho and John Thuo. He denied knowing Bosire. He stated that he did the application as a group. He added that the Golf Association made the application. He admitted that he did not have the application.
 21. Upon cross examination by Kinuthia, he stated that Agnes had been given the plot. He admitted that Agnes did not have an allotment letter. He stated that the land belonged to the employees of Gold club, Mau mau and jua kali. He further admitted that he was a squatter. He stated that he applied for plot number 34 and that he had an allotment letter. He further stated that he has been paying rates. He admitted that he did not have a receipt. He stated that the plot was demarcated and admitted that he did not have evidence of beacons.
 22. Upon re-examination, PW3 stated that the agreement with Agnes was written by his wife and that he was the buyer. He further stated that they made the application by themselves. He stated that there were beacons on the ground place by the government. He stated that he bought plot number 43. Anne Mutisya testified as PW4 where her witness statement at page 141 of the bundle was adopted as her evidence in chief. She testified that she owned plot No.49. She further testified that she had an allotment letter from County Council. It was her testimony that she was given the plot in the year 1998. She went on to testify that she applied and was given the plot as evidenced in page 45. She testified that she made her application on 10th June, 1997 and approval came on 12th October, 2004 while the full council appeared on 22nd December, 2004. She testified that she has since constructed a permanent house. PW4 testified that she had allotment and receipts of payment to County Council PEX 53 and 54. It was her testimony that she has been paying the money using the allotment letter. She testified that the school was new and that it was constructed by the government. She added that the county council allocated them the land yet they wanted to evict them. She testified that everyone made their own application. She further testified that no one has claimed the land.
 23. Upon cross examination by Wanjiru, she admitted that she had no evidence that she was born on the suit land or that her parents worked on the land. She stated that her letter after application came as Hannah Mutisya. She admitted that she did not work for County Government. PW4 stated that she paid Ksh 3,000 in 2018 and admitted that she was yet to pay the balance. She confirmed that she was allotted the land in 1997 but occupied it in 1999. She stated that was born on the suit land in 1963. She denied knowing Dickson Ngugi. She admitted that she had not gone to school. She also admitted that she was not aware how the land was registered or when she became a member. She admitted that she never paid the current rates.
 24. Upon cross examination by Ademeyon, she stated that she went to the county office offices where she paid the rates. She confirmed that the land belonged to government.
 25. Upon cross examination by Kinuthia, PW4 stated that the government moved them to the site. She further stated that the government told them to construct on the land. She admitted that she was not given a permit. She went on to state that she paid rates in 2018 for the first time. She added that the Government placed the beacons and showed them the land.
 26. On re-examination, she stated that the were records kept by the government. She further stated that they had another association known as Njoro Golf Squatters. She stated that the County Council called her and showed her the land.



27. Solomon Mbugua Ndungu testified as PW5 where his statement dated 24th April, 2023 was adopted as his evidence in chief. He testified that he was the owner of plot number 26 at Kiwanja ya Ndege Njoro, golf squatters estate. It was his testimony that he bought the plot from Peter Njoroge Mbugua for Kshs. 450,000/=. He produced the agreement as PEX 70 and acknowledgment as PEX 71. He also produced a bank slip PEX 72. He further testified that he went to the County Government in Njoro and had did a transfer. He produced the letter confirming transfer as PEX 73 and the receipts of transfer as PEX 19.
28. He testified that he paid Kshs. 9,000/= for the clearance certification and was shown the ground. claimed the rates. He testified that he had wanted to construct a house. He testified that he went to County Government offices on 13th January, 2022 where he paid and was given a plan PEX 74. He testified that he also got the approval from the subcounty Public Health officer on 25th January, 2022. He testified that he was issued with an invoice where he was to buy Ksh19,350 (PEX 17). He further testified that he paid on 6th January, 2022 (PEX 18) and was asked to leave the plan with them. PW5 testified that the plan was approved on 25th February, 2022. He produced the official communication as PEX 75. He went on to testify that he developed the plot 26 and assumed occupation in August 2022. He testified that his documents do not show any fraud and he added that he was not privy to any interest by the Defendants.
29. Upon cross examination by Wanjiru, he confirmed that he bought the land in 2021 and that Peter Njoroge was farming on the land. He confirmed that there was a pit latrine but he had not constructed the house. He confirmed that Peter Njoroge Mbugua was a member of Kiwanja ya Ndege. He further confirmed that Peter had not told him how he acquired the land. PW5 stated that the sale agreement was attested to by the Commissioner for oaths where he paid Kshs. 280,000 on 19th March, 2021 to Peter's account and the balance in cash. He stated that he did due diligence since he went to County Offices in Njoro and confirmed that Peter Njoroge was the owner. He stated that at the time of purchase, he was not aware how the land was acquired.
30. Upon cross examination by Ademeyon, he stated that the purchaser transferred the land. He stated that he had the allotment letter. He further stated that he had gone to the director of survey Nakuru and that he took the plan to the Lands Office for approval.
40. Upon cross examination by Kinuthia, PW5 stated that he had visited the County offices for transfer and confirmation. He confirmed that the land belonged to Peter Njoroge. He stated that Peter never gave him any document other than allotment letter. He admitted that he only relied on the allotment letter.
41. n re-examination, he stated that he was informed that the land was being sold by broker. He stated that he paid all money. He further stated that Plot number 26 at Njoro Squatter phrase 3 was being sold and that was when he enquired from the neighborhood. He stated that someone showed him a map which confirmed that the land belonged the Njoroge. He stated that he was not aware of any title deed in the area. He confirmed that applications were done by County Council and that the land was subdivided. He added that the documents were prepared by the land's office at the County government.
42. This marked the close of the Plaintiff's case.

1st Defendant's case

43. John Maina Gichuru testified as DW1 where his statement dated 20th December, 2022 was adopted as his evidence in chief. He testified that he had documents filed on 22nd December, 2022 and a further list of documents dated 17th November, 2023. He produced the documents as DEX 1-DEX 2. He



- testified that the present case was not proper. He testified that he was the security for the 1st Defendant which was registered in 1996. It was his testimony that the land in dispute was known as Njoro and that it had no title. He added that it was confirmed as PDP R23/2001. He testified that the land belonged to the Government. He went on to testify that they were given the land by government after they had been called to state house Nakuru in 1982. It was also his testimony that they had been invited by the late president Moi where Karanja Mukongoro was called and was told that the 1st Defendants were to be given something. He testified that the then president gave them a promise and that in 1996, they were called again and told to register themselves as Uhuru Welfare Association. He testified that the elders talked to the president and they were told to organize themselves after which they registered themselves and in late 1996 given the land.
44. He testified that they occupied the land in 2001 which had no structure since it was a bush. He also testified that they were never given any document. He went on to testify that upon occupation of the land, the land officers insisted that they had to follow the process. He added that the physical planner registered the movement and they were given land in Ndonguri Njoro and Gilgil. He testified that at the time the PDP's were being done, some persons in the lands started to scheme for the land. He testified that their PDP was gazette and they obtained approval and given allotment. He testified that the Plaintiffs were not members of Uhuru Welfare. He added that the land was far from Golf club. He testified that they filed a case against the County council but they never got any orders. He urged the court to dismiss the Plaintiff's case. He added that they paid Kshs. 820,000/= and urged the court to find the PDP as legal.
45. Upon cross examination by Ms Mukira for the Plaintiffs, he confirmed that their chairman was Thige Wakaba who died in 2010. He admitted that he had no evidence to confirm the same. He also admitted that the current chair was Karanja Benson. He stated that Francis was deceased and added that Julius Kariithi was not a chairman but a trustee. He also admitted that he had no documents to confirm the same. He stated that they were 753 members. He was referred to DEX3 where he stated that members were identified by their identity cards but for children it was left blank. He confirmed that the list at number 70 was Nyambura Kariithi while number 221 was Elizabeth Nyambura Kariithi being one and the same person. He stated that the list was certified by the Chief Njoro and the D.C. He went on to state that Henry Kimotho was a beneficiary No 178 and that he was a government officer. He confirmed that the list had freedom fighters and their children. He further confirmed that his ID No. wad 5750793. He admitted that he could not identify the number. He stated that the group on the ground was one. He added that their members were settled on 20 acres. He stated that there were 200 persons on 20 acres. He stated that all groups live on the ground where they have constructed. He stated that they were the first on the ground in 1999. He further stated that they complained in 2001 but confirmed they had no evidence of the same. DW1 admitted that the survey was not done.
46. He stated that their PDP was R23/2001/3 issued in 2001. He admitted that 1999 was earlier than 2001. He confirmed that the Physical planning officer prepares a PDP. He confirmed that the approved school serves all residents. He added that the allotment letter referred to R23.2001.3. He admitted that they were to pay Kshs. 475,590 but that they paid Kshs. 40,000 on 9th March, 2016 and on 28th November, 2016 they paid Kshs. 435,590 being 8 months apart. He admitted that the money was to be paid within 30 days from the date of receiving the letter. He admitted that he did not have the original receipts. He further stated that the receipts were for 14.14 acres. He admitted that they were late for 12 years. He added that they paid the allotment letter on 13th July, 2018 and that they paid through the C.S treasury. He admitted that in the JR case, the parties were Karanja Mukonyoro V Municipal council of Nakuru and that the Plaintiffs were not parties. He stated that they did not have the title deed due to court cases. He confirmed that they received allotment letters from the National Government and not from County Council.



47. Upon cross examination by Ademeyon for the 3rd Defendant, DW1 confirmed that in the judicial review case, the court found that the County council had no power to allocate the land. He further confirmed that the land had no beacons. He admitted that they delayed in payment of the allotment due to the many cases. He further admitted that they had no title. He stated that the Plaintiffs also have no title. He further stated that both groups have allotment letters. He stated that the PDP was not cancelled.
48. Upon cross examination by Kinuthia for the 4th Defendant, he stated that they went to state house in 1992 and were allocated land in 1996 as Uhuru Association. He stated that Kiwanja ya Ndege came up in 2021. He added that it never existed and that they were never allotted land. He stated that PDP No 86 existed while PDP No. 87 never existed. He confirmed that all the cases revolved around squatters who sold land.
49. Upon re-examination, he stated that Karanja Mukwanjoro was a member of the Welfare Association. He added that the receipts were prepared by the land office. He further stated that he was not involved in the allotment. He stated that the list was prepared by the Provincial Administrator. He also stated that the chief's name was on the list. He stated that the association resulted from Mau Mau fighters. He stated that the list was legitimate. He added that the groups on the ground were two, the Plaintiff and 1st Defendant. He stated that their PDP was approved 2001 and the allotments issued in 2004.
50. He was referred to PF 110 where he admitted that the letter did not refer to Kiwanja Ndege. He further admitted that the J.R ruling was delivered after the letter dated 1st December, 2013. He stated that he was advised not to pay for allotment until the dispute was resolved. He further stated that their PDP was from the National Government.
51. That marked the close of 1st Defendant case.

4th Defendant's case

52. Evans Ocheing Otieno the Senior Physical Planner, Nakuru County testified as 4th DW1. He testified that his core functions were the preparation of Local Physical and Land use development plans. He testified that allocation of land was not their core function. He further testified that they do not register transfer of ownership. He was referred to PEX 73 the transfer form where he testified that it is for taxation purposes and not transfer of ownership. He testified that they do not prepare PDP's as the same was done by the state department of lands. He added that he PDP's were prepared by the National Government. He testified that when there were 2 PDP's, the latter one takes precedence. He added that they did not deal with squatters.
53. It was his testimony that the parties never approached his office. He testified that he could not associate his department with the allotment letters. He went on to testify that he did not have the letter dated 31st January, 2013. He added that the payment by the Plaintiff was in respect of ground rent. He explained that when one has land and they wanted to pay ground rent, they usually provided the allotment letter. He further explained that the applicant approaches the registrar for registration but added that the land should not have any dispute. He testified that the department was not aware of any dispute. He testified that the County Governments started operating in 2019. He further testified that with the promulgation of Constitution of Kenya 2010, there was transition hence they could not allocate land. He testified that it was not possible to have taken that long to allocate.
54. Upon cross examination by Wanjiru, he denied having issued the Plaintiff with the allotment letter.
55. He confirmed that Land rates were for surveyed land while ground rent was on tax for use of land.



56. He further confirmed that payment of ground rent was not proof of ownership.
57. Upon cross examination by Mukira, he confirmed that he had no proof that he was an employee of the county government. He stated that for one to become a rate payer they needed to avail a copy of the title search, identity card and PIN. He added that land without title deed, one paid ground rent. He stated that one needed an allotment letter and identification document. He stated that they do site visit to confirm the ground. He confirmed that he was familiar with PEX22, a receipt of Nakuru County Council issued on 23rd April, 2001. He confirmed that the receipts were issued by the Nakuru County Council. He admitted that PEX 23 was issued by Nakuru County Council, being plot No 43 to Agnes Wambui. He confirmed the signatures and stated that he could read the documents but he could not confirm that they were from the county council of Nakuru. He confirmed that property rate payment receipt issued to Benson Ndungu Kamau being payment of ground rent. He admitted that PEX 30, 31 was ground rent. He admitted that the receipts of payment of ground rent was by Plaintiffs covering 4 years. He stated that the County Government visited the ground to confirm Physical occupation. He added that the County Council went to the ground and found the Plaintiffs.
58. He stated that when a person received a certificate, it meant that he/she has complied with the regulations. He confirmed that PEX 74 was an approval with stamps by land survey and public health. He testified that they did a ground visit where they ascertained that the plot was on the ground. He went on to state that the process of allocation involved balloting which is done after subdivision. He added that the county could only advertise. He added that the land did not fall under County Council and the County Government did not anticipate allocation of the land. He stated that the County Council allocates through a full council meeting.
59. He was referred to Page 23-52 where he confirmed that there was a full council meeting. He stated that the custodian of the record was the clerk to the County Council and that there was no role played by the County council in allocation of government land. He added that allocation starts from the county level. He admitted that the County Government was sued in JR No.21 of 2008. He however confirmed that he was not aware of the position taken by County Government. He stated that his evidence was that the County council did not issue allotment letters.
60. He stated that the land was unsurveyed. He confirmed that an offer of allotment has limitation of time and non-compliance meant that the land returns back to government. He admitted that statutory payments could be paid in instalments but within a reason period. He confirmed that it could even be 10 years.
61. He was referred to PEX64 recommended nullification of approved PDP where he stated that the J.R case was not within his knowledge. He stated that if a PDP list is prepared preceding the other then the later prevails. He stated that the document was not genuine.
62. Upon re-examination, he stated that he could not confirm the genesis of the document. He further stated that the Plaintiffs ought to have brought the request letter and balloting and the Ministry should have prepared a general plan. He stated that the full council meeting was on but there was no proof that the council sat. He added that there was no evidence of site visit. He stated that he could not confirm if the ownership documents were genuine. He added that the squatters could only be allocated land by National Government.
63. That marked the close of the 4th Defendants case.



3rd Defendant's case

64. Author Kanyanjwa Mbatuya the Assistant Director of Physical Planning testified as the 3rd DW1. He testified that he was representing the National Director of Physical Planning. His letter dated 27th October, 2023 was adopted as his evidence in chief. He testified that attached to the said letter was a PDP which he produced as 3rd DEX 1. He testified that he had a part Development Plan No. R23.2001.3. which was an approval prepared on 20th November, 2001. He testified that it was certified by the Director of Physical Planning on 1st July, 2004 and approved by the Ministry for lands and settlement on 8th October, 2004. He testified that the PDP was for existing sites for exfreedom fighters 1st Defendant and subsequent subdivision. A=Residential plots, B= Residential plots, C= Residential plots, D= Commercial plots, E= Commercial plots, F= Primary school, G= Secondary School and H= Girls approved school. He testified that the plan was to provide documentation for them who had settled. He testified that he did not have a list of the ex-freedom fighters as it was to be prepared by the P.C. It was his testimony that the procedure for preparation of cost PDP started with a request by the County Government. He explained that the Physical Planning goes on the ground to check the status on the ground whether the land is committed for another purpose and proceeds to prepare a plan. He further explained that the plan is then circulated to the relevant government officers including the local authority. He explained that after communication on the plan, he forwards the plan to the National Director of planning who gazettes the PDP in the Kenya Gazettee. He added that any objection is then entertained in witness within 60 days. He testified that the Director of planning certifies the plan which is then provided to the minister of land for approval. He went on to explain that after approval, the plan is forwarded to the Commissioner of Lands for issuance of letter of allotment. He testified that the plan in Kenya was number 86. He was referred to PEX 6 where he testified that the said PDP was not in their records. He testified that in 1999, when the PDP was prepared they had not started using computers. He added that the said document was computer generated hence it never emanated from the Director of Physical Planning. He testified that it related to the suit property. He added that there could only be one PDP for a single property. He testified that their PDP was approved in 2004 while that by the Plaintiffs was dated 1998. He added that the allotment letter relayed on the Plaintiffs PDP was issued in 1997 while the PDP is dated 1999. He testified that the Plaintiffs were given 60 days. He further testified that the County Council could not issue allotment letter before the PDP was prepared. He added that the PDP grounds to allocation. He testified that the PDP was prepared in accordance with the law and added that there was no court order.
65. Upon cross examination by Wanjiru, he stated that the authentic PDP was R23.2001.3 3rd DEX1. He added that there was no other plan for the land in question. He stated that the said PDP was certified by the Director on 1st July, 2004 and approved on 8th October, 2004. He went on to state that the PDP by the Plaintiffs was certified on 13th March, 1997 being 7 months after issuance of letter of allotment. He confirmed that the inconsistency rendered the allotment a nullity. He confirmed that a PDP could only be revoked through a gazette notice. He further confirmed that the PDP R23.2001.3 was never withdrawn. He stated that the PDP R23.2001.3 was prepared in favour of ex freedom fighters, the 1st Defendant herein.
66. Upon cross examination by Mukira, he confirmed that he had his job card as the principal planner. He added that he was now an assistant Director of Physical Planning and stated that his designation was not specified in the letter dated 27th October, 2023. He stated that he had a bachelor of Arts in planning, 1st class honors from the University of Nairobi. He stated that the 1st procedure of PDP was to receive a request from the County Council of Nakuru. He stated that the County Council was then to commence the town work allocation committee and the Planner was to seek committee's approval. He explained that after approval, the County Council wrote to the Physical Planning officer to prepare



the plan. He stated that officers sought the approval to prepare the PDP from the Commission of lands through the Director of Physical Planning. He went on to state that after the authority is given to the physical planner, he/she prepares the PDP. He confirmed that he was not aware of allotment letters. He added that the Plaintiff's allotment letter showed that there was adherence to the procedure of allocation. He stated that there was a difference between rates and allocation. He explained that for one to pay rates, there must be a process which meant that the procedure was followed. The witness was referred to PEX 12 where he stated that the same was request for ground rent arrears. He was further referred to PEX 13 where he confirmed that it was payment requested for ground rent arrears and ground rate. He confirmed that PEX 14 was a valid document as it showed that the County Government had allocated the plot. He stated that before allocation, there were statutory payments such as application fee and surveying fee for the surveyor. He added that PEX15 was the application fee receipt. He further stated that the development of property started with urban planning and that an application was made to County Executive Committee member. He stated that when an appeal was made, the plot must be in existence on the ground. He added that the Physical Planning development does not visit the ground. He stated that PEX 74 was the approved architectural drawing which confirmed that the County Government approved the process. He went on to state that the PDP issued in 2004, complied with procedure. He admitted that he did not have evidence that the County Government allocated the land to the 1st Defendant. He stated that an allotment letter was preceded by the PDP. He confirmed that he had no allotment letter issued after the PDP of 2001 (3rd DEX 1). He stated that an allotment letter was proof of allocation and added that where there was no acceptance, allotment lapses. He also stated that where there was no compliance, the allocation lapses. He stated that in the preparation of PDP, there were no statutory payments. He went on to state that once the PDP was completed the Physical planner gazetted the completion and the PDP was displayed at the Director's and Chiefs office. He added that anyone with a justified objection could file the same within 60 days. He was referred to PEX 65 where he denied having knowledge of the same. He stated that the PDP was opposed in 2004. He added that the letter by the clerk dated 31st January, 2013 was done 9 years later thus late. He went on to state that the County council had powers to allocate their land. He confirmed that the authentic PDP was R23/2001.3

67. The witness confirmed that PEX 6 and dated 5th December, 1997 was prepared by H.M Mwau with a department refence R23/98/7. He confirmed that it was properly certified by the Director Physical Planning and dated 7th January, 1998. He added that it was approved on 21st January, 1998. He further confirmed that PEX 6 and 3RD DEX1 PDP's had the same format. The department requirement was R23. He admitted that the PDPs had no stamps but confirmed that they had an approval number and a signature. He added that PEX 6 did not have coordinates while 3rd DEX 1 had coordinates. He went on to state that the location for schools and residential plots were not the same in the PDPs. He confirmed that the PDP R23/98 was a forgery since it had never been prepared by their department. He stated that he was not aware of any squatters on the suit land. He also stated that the County Executive Committee could resolve the problem. He stated that ref No. R23/87/1 was certified on 13th March, 1997.
68. Upon re-examination, he stated that there was no other PDP aside from R23/2001/3. He stated that PDP R23/97/7 was not genuine and that the PDP for Njoro Golf Squatters was a proposal. He stated that the approval Development plan number was issued after approval by the commissioner. He added that PEX 63 was not an objection and that the letter at page 117 was done before approval of the PDP. He denied having PEX 64 in their records or a gazette revoking a PDP. He stated that the Plaintiff's PDP did not have an approval number. He stated that he could not confirm the authenticity of the receipts or whether the meeting happened. He confirmed that allocation time could be extended. He explained that once the PDP had been prepared and allotment letter issued, in the event the permission



did not comply, the Commissioner of lands would allocate the land to a different person. He stated that the planner prepared the coordinates. He further stated that the property did not exist anywhere since it had no coordinates.

69. This marked the close of the 3rd Defendant's case.

Submissions

70. Counsel for the Plaintiff filed her submissions dated 27th November, 2024 where she gave a detailed summary of the case and identified five issues for determination. The first issue was whether the PDP NO. R23/2001/3 was illegally, irregularly, fraudulently and/or unprocedurally obtained and/or procured. While submitting in the affirmative, counsel relied on the cases of Arthi Highway Developers Limited V West End Butchery Limited & 6 Others (2013) and Kiplagat Masit & 6 Others, ELC 930 of 2012 (2022) KLR. She submits that at the time the PDP was being prepared, there were already occupants in the suit land. Counsel argues that the 2nd Defendant failed to conduct due diligence to ascertain the persons in the suit land. She submits that crucial steps that preceded preparation and issuance of the PDP were not taken into consideration. She further submits that the list of members of the 1st Defendant used for the preparation of the PDP R23/2001/3 in its favour was fraudulently prepared. Counsel argued that from DW1's evidence, the list of members names was untrue and thus the procuring of the PDP using the said list amounted to an illegality.
71. The second issue was whether the members of the Plaintiff are the lawful owners and/or allottees of Njoro Golf squatters Phase 1 plot No. 4, J4,J5,7,11,12,13,18,19,21,22,25,27,28,30,33,34,36,37,38,44,49,56,57,66,69,72,78 (residential) njoro golf squatters phase ii plot nos. j2,3,8,9,13,15,16,j16,17,19,20,21,25,j25,j28,31,32,33,j33,j34,j35,37,j38,42,48,59,60,61,65,74, 75,77,80 (residential) and njoro golf squatters phase iii plot nos. 6,10,17,23,25,31,37,66,74,87,102 (residential). While submitting in the affirmative, counsel relied on the case of Nelson Kazungu Chai & 9 Others V Pwani University College (2014) eKLR and submits that the Plaintiff's PDP (R23/98/7) dated 5th December, 1997 met the legal requirements. It was counsel's submission that the PDP was prepared and certified by the Director of Physical Planning Department on 7th January, 1998 and approved on 21st January, 1998 by the Commissioner of Lands. She argues that the allegation by DW5 that the said PDP was not in their records was unreliable since he did not produce the entire file which contained the suit land records. She adds that this was despite having confirmed that the said file existed. It was her submission that the Plaintiffs proved to the required standard that their presence and occupation of the suit property was legal since they were allotted the plots by the defunct county council. She also submits that the Plaintiffs paid for the allotted plots as evidenced in the receipts produced as PEXB12 to PEXB58. She adds that the Plaintiffs have lived on the suit land and that some of them acquired the property as innocent purchasers for value. Counsel submits that the Plaintiffs occupation has been peaceful and lawful.
72. The third issue was whether the orders sought by the 1st Defendants are merited. She relied on a number of cases including the case of Chief Lands Registrar & 4 Others V Natha Tirop & 4 Others (2018) eKLR and Nelson Kazungu Chai & 9 Others V Pwani University College (2014) eKLR. It was her submission that the 1st Defendant having failed to comply with the requirement to pay the letters of allotment within the stipulated time, the offer had since lapsed and that it was immaterial whether or not the payments were made and accepted 12 years later.
73. The fourth issue was whether the orders sought by the Plaintiffs are merited. Counsel submits in the affirmative and relied on the case of Harison Mwangi Nyota V Naivasha Municipal Council & 20 Others (2019) eKLR. She submits that the allocation of land to the Plaintiffs by the County Council



was legal and justifiable. In conclusion, counsel relied on Section 27 of the Civil Procedure Act and urged the court to grant them costs of the suit.

74. Counsel for the 1st Defendant filed his submissions where he gave a summary of the case and identified four issues for determination. The first issue was which of the two PDPs PDP ref R23/2001/3 and/or PDP NO R23/98/7 is valid. He submits that the genuine PDP was that owned by the members of the 1st Defendants being PDP R23/2001/3. He further submits that the 1st Defendant demonstrated the process of acquisition of their PDP was lawful, transparent with strict compliance with the procedural requirements set out by the then Commissioner of Lands. It was his submission that for any PDP to be recognized, the same ought to be gazette. He adds that the Plaintiff admitted that their impugned PDP was never gazette and that they had no approved plan. He went on to submit that in the absence of the vital elements, the PDP is void. He submits that the process that culminated to the acquisition of the 1st Defendants PDP no R23/2001/3 was in accordance with the procedure outlined by DW1. Counsel argues that there was no double allocation of the suit land. He submits that only one PDP is given unless the previous one has been cancelled or degazetted which was not the case in the present suit. He further submits that the plots referred to by the Plaintiffs comprised in the PDP NO 23/98/7 were computer generated, fictitious and nonexistent. He adds that the 3rd Defendant confirmed that in 1998 when the Plaintiffs purported that their PDP was prepared, they had not started using computers to produce such a PDP. It was counsel's submission that the Assistant Director Physical Planning testified that for a PDP to exist on the ground, it should bear the X and Y coordinates. He further submits that the Plaintiffs PDP did not bear the said coordinates thus it was null and void since it could not be placed on earth. The second issue was who are the legal allottees of the suit parcel. Counsel submits that the 1st Defendants were the legitimate allottees of the suit land. He adds that the council was not vested with the powers to allocate land and that no person had occupied the said parcel by 1994 since it was vacant. He went on to submit that the Plaintiffs witnesses contradicted their statements casting doubt on their credibility. He also submits that the 1st Defendant followed the right procedure in acquisition of the suit land comprised in PDP NO R23/2001/3. He relied on the case of Mohammed Haji Dagare V Hakar Abshir & 3 Others [2021] eKLR and submits that the 1st Defendant fulfilled the steps required in allocation of the suit property.
75. The third issue was which of the parties are entitled to the orders sought in their pleadings. He relied on the case of Alberta Mae Gacie V Attorney General & 4 Others [2006] eKLR and submits that the Plaintiffs allotment letter and resultant PDP are not valid and thus the prayers sought by the Plaintiffs could not be granted and ought to be dismissed with costs to the 1st Defendant.
76. Counsel for the 3rd Defendant filed her submissions dated 5th December, 2024 where she identified one issue for determination, who is the rightful owner of the parcels of land in PDP R23/98/7 and PDP R23/2001/3. She relied on Section 3, 4 and 9 of the Government Lands Act (Repealed) (GLA) and submits that the power to dispose public land was vested in the President and the Commissioner of Lands. It was counsel's submission that the Municipal council had the mandate of advising the Commissioner of Lands on which portions of land were available for disposal. She adds that a PDP would be drawn and approved by the Commissioner. Counsel cited the case in Nelson Kazingu Chai & 9 Others V Pwani University College [2014] eKLR. She submits that the third step involved determination of matters listed under section 11 of the GLA by the Commissioner of Lands. She went on to submit that gazettelement was then done for the plots to be sold at least four weeks prior to the sale by auction as provided under section 13 of the GLA. She further submits that the highest bidder would then be issued with an allotment letter which the allottee needed to comply with the conditions set out. She cited the Court of Appeal case of Joseph N.K Arap Ng'ok V Justice Moiyo Ole Keiyua & 4 Others C.A 60/1997. She submits that the Nakuru County Council had no powers to allocate land as its function was limited to advising the Commissioner of Lands on the availability of land for



allocation. She relied on the case of *Harrison Mwangi Nyota V Naivasha Municipal Council & 20 Others* [2019] eKLR.

77. Counsel submits that the Plaintiffs did not produce any certificate of lease or title to show ownership of the said plots. She adds that the Plaintiffs did not produce any evidence that showed the PDP R23/98/7 was ever gazetted. She urges the court to dismiss the Plaintiffs claim.

Analysis and Determination

78. I have considered the pleadings, evidence on record and submissions and I am of the view that the following issues arise for determination:
- a. Who is the lawful owner of the suit property?
 - b. Whether the Plaintiff is entitled to the prayers sought.
 - c. Whether the 1st Defendant's Counter claim is merited.
 - d. Who should bear the costs of the suit.

Who is the lawful owner of the suit property?

79. This is a representative suit in which members of the Plaintiffs are seeking for a declaration that they are the lawful allottees of the parcel of land comprised in the PDP NO R23/98/7. They also sought for a declaration that PDP NO R23/2001/3 was illegally and fraudulently obtained thus null and void. The 1st Defendant on the other hand is also claiming the same land with a different PDP being NO R23/2001/3 which the Plaintiffs want declared a nullity.

80. Section 107 of the *Evidence Act*, Cap 80, states:

“Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.” Further, Section 108 of the Act states:

“The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.”

81. It is this court's view that in order to determine the issue, it is important to establish the genesis of the PDPs culminating to allotment of the suit land vis a vis the evidence tendered. With that in mind, the burden of proof squarely lay on the Plaintiffs to prove that the 1st Defendants PDP was fraudulently acquired as alleged and thus that they are not entitled to the suit land. The Plaintiffs called four witnesses who testified that they were squatters having been allotted the suit land by the Municipal Council of Nakuru. The fifth witness PW5 testified that he bought the suit property from one of the squatters after conducting his due diligence. It was the Plaintiffs case that the 2nd Defendant failed to conduct due diligence since the PDP was prepared after they had already taken possession of the suit land. It was the Plaintiffs submission that PDP R23/98/7 dated 5th December, 1997 was prepared and certified by the Director of Physical Planning Department on 7th January, 1998 and approved on 21st January, 1998 by the Commissioner of Lands. The Plaintiffs contend that the list of members names used by the 1st Defendant in the procuring of their PDP was false amounting to an illegality. It was also the Plaintiffs contention that the evidence by DW5 that PDP NO R23/98/7 was not in their records was unreliable since he failed to produce the entire file contained the suit land records.
82. It was the 1st Defendant's case that they were given the suit parcel by the late president Moi at Nakuru state house in 1996. DW1 confirmed that they took possession of the land in 2001 after which they



were informed that they needed to follow the due process. He confirmed that it was then that the physical planner registered their movement and they were given the suit land. He also confirmed that their PDP was gazetted after which they obtained approval and given allotment letters.

83. The 3rd Defendant vide the evidence of the Assistant Director of Physical Planning confirmed that before the 1st Defendant's PDP R23/2001/3 had been issued, there was no other PDP in place. He also confirmed that despite the allegation by the Plaintiffs, that their PDP was approved, in 1998, the same was a forgery since there were no computers at the time. He added that the Plaintiffs PDP bore no coordinates X and Y thus it could not be placed on earth.
84. The 4th Defendant, by virtue of the evidence by (4th DW1), the Senior Physical Planner, Nakuru County confirmed that they did not deal with squatters. He also confirmed that he never issued allotment letters to the Plaintiffs. He confirmed that there was no role played by the County council in allocation of government land. He also admitted that the statutory payments in the allotment letters could be paid in installments within a reasonable period.
85. It is trite law that the process of acquisition of government land is set out in the Government Lands Act Cap 280 (Repealed), which Act gives powers to the president to allocate unalienated parcel of lands. In the said Act, it only provided two instances upon which government land could be allocated to private persons.
86. Section 3 of the Government *Land Act* (Repealed) states;
- “The President, in addition to, but without limiting, any other right, power or authority vested in him under this Act, may—(a)subject to any other written law, make grants or dispositions of any estates, interests or rights in or over unalienated government land.”
87. In addition, Section 7 of the Act further states that;
- “The Commissioner or an officer of the Lands Department may, subject to any general or special directions from the President, execute for and on behalf of the President any conveyance, lease or license of or for the occupation of Government lands, and do any act or thing, exercise any power and give any order or direction and sign or give any document, which may be done, exercised, given or signed by the President under this Act: Provided that nothing in this section shall be deemed to authorize the Commissioner or such officer to exercise any of the powers conferred upon the President by sections 3, 12, 20 and 128.”
88. In the case of *Mako Abdi Dolal v Ali Duane & 2 others* [2019] eKLR the court noted that prior to the promulgation of the 2010 Constitution and the 2012 amendments to the body of Land Laws in Kenya, disposition of government land was governed by the Government Lands Act (Repealed).
89. Section 4 of the Act provided as follows:
- “All conveyances, leases and licenses of or for the occupation of Government Lands, and all proceedings, notices and documents neither this Act, made, taken, issued or drawn, shall serve as otherwise provided, be deemed to be made, taken, issued or drawn under and subject to the provisions of this Act.”
- Power to dispose of public land was vested in two entities: The President and the Commissioner of Lands, under Sections 3 and 9 respectively. The process of the disposition of government land followed the following procedure: First, the respective municipal council in which the land to be disposed was situate had the mandate of advising the



Commissioner of Lands on which portions of land could be disposed. This step would have required the responsible council to visit the area or to carry out a fact-finding mission to satisfy itself that the land was first of all government land and second that it was indeed available for disposition.”

90. It is this court’s view that it is clear that from the above that the President was the only person with the power to alienate government land. Further, the Commissioner of Land’s power was limited to execution of leases or, conveyances on behalf of the President. The Nakuru Municipal council’s mandate was to advise the Commissioner of Lands on which lands could be disposed. It is not in dispute that the allotment letters issued to the Plaintiffs were executed by the Nakuru Municipal
91. Council. It was also the Plaintiffs case that they were in fact allotted the suit land by the said council. In view of the above, it is clear that the Plaintiffs allotment of the suit land was improper to begin with.
92. Going to the preparation and issuance of the PDPs, in the case of Ali Mohamed Dagane (Granted Power of Attorney by Abdullahi Muhumed Dagane, suing on behalf of the Estate of Mohamed Haji Dagane) v Hakar Abshir, Abdullahi Ibrahim Gure, Shaye Abdi Kusow & Sambul Ali Bulugho [2021] KEELC 3604 (KLR) the court stated that:

“...The process of the disposition of government land followed the following procedure: First, the respective municipal council in which the land to be disposed was situate had the mandate of advising the Commissioner of Lands on which portions of land could be disposed. This step would have required the responsible council to visit the area or to carry out a fact-finding mission to satisfy itself that the land was first of all government land and second that it was indeed available for disposition... The second step would be for the part development plan to be drawn up and approved by the Commissioner of Lands. The third step involved the determination of certain matters by the Commissioner of lands which matters are listed under Section 11 of the Government Lands Act (Repealed). The matters to be determined include the upset price at which the lease of the plot would be sold, the conditions to be inserted into the lease; the determination of any attaching special covenants and the period into which the term is to be divided and the annual rent payable in respect of each period... The fourth step would be for the gazette of the plots to be sold, at least four weeks prior to the sale of the plots by auction under Section 13 of the Government Lands Act (Repealed). The notice was required to indicate the number of plots situate in an area; the upset price in respect of every plot; the term of the lease and rent payable, building conditions and any attaching special covenants... The fifth step would be for the sale of the plots by public auction to the highest bidder. Section 15 of the Government Lands Act (Repealed)... The sixth step would be for the issuance of an allotment letter to the allottee. An allotment letter has been held not to be capable of conferring an interest in land, being nothing more than an offer, awaiting the fulfilment of the conditions stipulated therein by the offeree. The allotment letter also must have attached to it a part development plan (PDP) ... The seventh step, which comes after the allottee has complied with the conditions set out in the allotment letter is the cadastral survey, its authentication and approval by the Director of Surveys and the issuance of a beacon certificate...” [Emphasis mine]

93. It is this court’s view that while keeping in line with the above procedure, it is not in dispute that from the Plaintiffs evidence, preparation of the PDP NO R23/98/7 fell short of fulfilment of the said steps. To begin with, PW1 admitted that their allotment letters issued by the Nakuru Municipal Council was issued before the PDP which he also confirmed that it was prepared when they had already taken possession of the suit land. Secondly, Plaintiffs relied on the gazette notice number 999 that belonged



to the 1st Defendant's PDP NO. R23/2001/3. Thirdly, it was not disputed that PDP NO R23/98/7 did not have the X and Y coordinates as opposed to PDP NO. R23/2001/3. It is noteworthy that a PDP is normally attached to an allotment letter, I do find that the absence of a properly documented PDP renders the Plaintiffs allotment letter incomplete. It was not disputed that the Plaintiffs PDP did not have an approval number as confirmed by the 3rd Defendant. At this juncture, it is not possible for this court to ascertain the authenticity of the Plaintiffs PDP NO. R23/987/7 or how the Plaintiffs took possession of the suit land in the first place without a definite PDP number since a letter of allotment is based on the PDP. On the other hand, the 1st Defendants preparation and approval of PDP NO. R23/2001/3 followed to the latter the steps as highlighted above. It is this court's view that in as much as the 1st Defendant fulfilled the conditions in the allotment letter after the 30 days, it was the 3rd Defendant's evidence that allocation time could be extended, the 4th Defendant also confirmed that payment could be done in installments. The 1st Defendant adduced evidence in form of receipts which confirmed that they fulfilled the required conditions of the allotment letter.

94. In the case of Funzi Development Ltd & Others V County Council of Kwale, Mombasa Civil Appeal No.252 of 2005 the court held:

“...a registered proprietor acquires an absolute and indefeasible title if and only if the allocation was legal, proper and regular. A court of law cannot on the basis of indefeasibility of title sanctions an illegality or gives it seal of approval to an illegal or irregularly obtained title.”

95. In view of the above, the Plaintiffs failed to satisfy this court how PDP NO. R23/987/7 was prepared and approved. It is important to note that it did not matter that the Plaintiffs had a legitimate expectation to be allocated the suit property. The Defendants on the other hand have successfully established the procedure followed in preparation and approval of the PDP NO R23/2001/3. Consequently, it is my view that the suit land was not properly alienated to the Plaintiffs and I therefore find that the 1st Defendants are the lawful owners of the suit property.

Whether the Plaintiff is entitled to the prayers sought.

96. Having found that the 1st Defendants are the lawful owners of the suit property, it therefore means that the Plaintiffs are not entitled to the prayers sought in their plaint dated 24th November, 2021.

Whether the 1st Defendant's Counterclaim is merited.

97. I find that the 1st Defendant Counter claim 20th December, 2022 is thus merited.

98. The upshot of the above is that I enter judgment in favour of the Defendants in the following terms:

- a) A declaration be and is hereby issued that the 1st Defendant is the lawful owner of the suit property.
- b. The Plaintiffs and any other trespassers in occupation of the suit property vacate the suit land within 90 days from the date of this judgment.
- c. A permanent injunction be and is hereby issued restraining the Plaintiffs or any other person from continuing being in occupation and or trespassing on the 1st Defendant's land mentioned above either by themselves, their agents, servants, and or any person(s). d) Each party shall bear its own costs It is so ordered.

SIGNED BY: HON. JUSTICE ANTONY O. OMBWAYO

THE JUDICIARY OF KENYA.



**NAKURU ENVIRONMENT AND LAND COURT
ENVIRONMENT AND LAND COURT**

DATE: 2025-02-06 13:24:29

The Judiciary of Kenya  **8/8**

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