



**Otom (Suing as the Administrator of the Estate of Thomas Otom Agullo) v Commissioner of Lands & 4 others (Environment & Land Case 747 of 2015) [2025] KEELC 3991 (KLR) (8 May 2025) (Judgment)**

Neutral citation: [2025] KEELC 3991 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KISUMU  
ENVIRONMENT & LAND CASE 747 OF 2015**

**E ASATI, J  
MAY 8, 2025**

**BETWEEN**

**MICHAEL ODERA OTOM (SUING AS THE ADMINISTRATOR OF THE ESTATE OF THOMAS OTOM AGULLO) ..... PLAINTIFF**

**AND**

**THE COMMISSIONER OF LANDS ..... 1<sup>ST</sup> DEFENDANT  
THE ATTORNEY GENERAL ..... 2<sup>ND</sup> DEFENDANT  
KISUMU TEACHERS’ SACCO LTD (KITE) ..... 3<sup>RD</sup> DEFENDANT  
KISUMU COUNTY GOVERNMENT ..... 4<sup>TH</sup> DEFENDANT  
NATIONAL LAND COMMISSION ..... 5<sup>TH</sup> DEFENDANT**

**JUDGMENT**

1. Michael Odera Otom the Plaintiff herein brought the suit the subject matter of this judgement against the Defendants in his capacity as Administrator of the estate of his father one Thomas Otom Agullo, deceased. Vide the Further Further Amended plaint dated 14<sup>th</sup> August 2017 he pleaded that the deceased was at all material times the proprietor of a parcel of land measuring 25 Hectares or more or thereabouts situate between Kibos Kisumu Road and the Kibos Kisumu Railway line within Kasule sub-location, Central Kolwa location within Kisumu Municipality in the Republic of Kenya. That the land was unregistered at the material time with the ownership rights of the deceased being acquired under African Customary Law.
2. That his father had acquired the land from his (Plaintiff’s) grandfather by the name Joshua Agulo Sule. That his father, grandfather and grandmothers were buried on the land when they died. That the land



is ancestral land passed from generation to generation and that they have been occupying the land for over 150 years. That the land was not acquired by government and that it is not community land.

3. The Plaintiff's complaint was that the land was quietly registered under the Registration of Title Act as L.R. 67384 in favour of M/s Karen Enterprises and that in the year 2005, he discovered that the land in question had been grabbed by individuals the 3<sup>rd</sup> Defendant being one of them, that when he conducted search, he found out that land had been sub-divided into LR 16344, 16345, 16346, 15299 and 15300. That the 3<sup>rd</sup> Defendant has encroached onto L.R. NO.16344 and 16345 which are also occupied by Karen Enterprise Limited. He pleaded further that he built and has lived on land parcel No.LR.16344 and 16345 for the past 42 years. That the registration of the land under the Registration of Titles Act and the acquisition of the lease and the grant in respect thereof were irregular, illegal, unconstitutional and fraudulent.
4. The Plaintiff therefore sought for;
  - a. A declaration that the purported bringing of the suit land under the Registration of Titles Act Cap 281 Laws of Kenya, the creation of the grant and the subsequent creation and registration of a lease over the same in favour of the Plaintiff was fraudulent, irregular, illegal and therefore null and void.
  - b. A permanent injunction restraining the Defendants, their agents, employees or servants from interfering, trespassing, transferring, sub-dividing land parcel IR 67384 (L.R.16344, 16345, 16346, L.R 15299 and L.R 15300).
    - (i) An order cancelling the bringing of the suit land under the Registration of Titles Act Cap 281 Laws of Kenya under grant number IR NO.67384, the subsequent creation and registration of a title deed over the same as L.R. NO.16345, LR.16344 and 15300.
  - c. An order bringing of suit land under Registration of Titles Act Cap 281 Laws of Kenya under grant number IR67384, the subsequent creation and registration of a title deed over the same as LR 16344 and LR 15300 in the name of the Plaintiff.
    - c. (i) An order cancelling the bringing of the suit land under the Registration of Title Act Cap 281 Laws of Kenya under grant number IR 67384 the subsequent creation and registration L.R. NO.16344 in favour of the 3<sup>rd</sup> Defendant and the same be resurveyed and be registered under title deed in the name of the Plaintiff (Michael Odera Otom) being the Administrator of the estate of Thomas Otom Agulo.
    - (c) ii) An order cancelling the bringing of the suit land under the Registration of Title Act Cap 281 Laws of Kenya under grant and subsequent creation and registration of title deed over the same as LR 16345, LR 16344, LR 15300, LR.15299 and LR 16346.
    - (c) (iii) An order cancelling the bringing of the suit land under the Registration of Titles Act Cap 281 Laws of Kenya under grant number IR 67384 the subsequent creation and registration of the title deed over the same as LR 16345, LR 16344, LR 15300, LR.15299 and LR 16346 in the name of the Plaintiff.
  - (d) A declaration that the suit land is free property of the deceased and therefore forms part of the deceased's estate.
  - (e) In the alternative but without prejudice to the foregoing payment by the Defendants of damages equivalent to the current market value of the suit land.
  - (f) costs of the suit.



- (g) Interest at court rates from the date of judgement until settlement in full.
5. In response to the plant, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants filed no defence.
  6. The 3<sup>rd</sup> Defendant vide the 3<sup>rd</sup> Defendant's Statement of Defence dated 7<sup>th</sup> December 2011 denied the Plaintiff's claim and averred inter alia that the plaintiff had no locus standi to institute the claim, that Thomas Otom Agullo had never owned the suit land and hence the land could not form part of his estate, that the plaintiff's case cuts against the grain of the doctrine of eminent domain hence unsustainable in law, that there was no irregularity, unlawfulness, unconstitutionality or illegality in the registration of the suit land.
  7. The 4<sup>th</sup> filed the 4<sup>th</sup> Defendant's Statement of Defence dated 4<sup>th</sup> July 2023 and denied the plaintiff's claim.
  8. And the 5<sup>th</sup> denied the plaintiff's claim vide its defence dated 15<sup>th</sup> October 2018. The 5<sup>th</sup> Defendant specifically denied breach of the plaintiff's proprietary, legal or beneficial rights to the property in question and averred that the plaintiff was never vested of any of the rights claimed.

### **The Evidence**

9. On behalf of the Plaintiff, 3 witnesses testified. PW1 was the Plaintiff. He adopted the contents of his witness statement dated 22<sup>nd</sup> January, 2018 as his evidence in chief. He stated in the said witness statement that the land he claimed measured 25 hectares. That the same belonged to his late father Thomas Otom Agulo. That the land was not gazetted as having been acquired by government. That however the land was quietly registered under the Registration of Titles Act as IR NO.67384 and then registered as LR NO.16344 in favour of Kisumu Teachers Sacco Ltd after the County Government of Kisumu and the National Land Commission illegally allocated the land to the 3<sup>rd</sup> Defendant. That a search conducted showed that the land had been sub-divided into LR NO.16344, 16345, 16346, 15299 and 15300.
10. That through various correspondences he raised his concerns to the National Land Commission and the County Government of Kisumu who have refused to respond.
11. That the National Land Commission later confirmed that the land belonged to him. He produced exhibits P.1 to P.36.
12. He stated that the land was ancestral land which his father got from his grandfather. That he had lived on the land for 47 years. That the land claimed by the 3<sup>rd</sup> Defendant is in Kanyakwar.
13. On cross-examination, the plaintiff stated that he did not have a surveyor's report to confirm that his developments are on the suit land. That he did not know the size of land parcel L.R.16344 which is registered in the name of the 3<sup>rd</sup> Defendant. That he filed a claim before the National Land Commission in the year 2016.
14. PW2 was Christopher Nyabinda Ogola. He adopted the contents of his witness statement dated 12<sup>th</sup> April, 2020 as his evidence in chief. He stated that in the year 1976, the land belonged to the family of Thomas O. Ayula.
15. PW3 adopted the contents of his witness statement dated 26<sup>th</sup> August, 2011 as his evidence.



### **The 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> Defendants adduced no evidence.**

16. The 3<sup>rd</sup> Defendant called one witness, Allan Ochieng Kagwa, its Chief Executive Officer (CEO) who testified and produced exhibits. He stated that it is the 3<sup>rd</sup> Defendant who is in occupation of the suit land. That the Plaintiff has for a long time been encroaching on the land. He stated on cross-examination that the 3<sup>rd</sup> Defendant was given the land on conditions which it complied with.
17. DW2 was Sospeter Ohanya, a Surveyor who testified that he was tasked to prepare a survey report on L.R. NO.16344 versus LR 96243 and LR NO.67384. That his findings were that there was no spatial relationship between the 3 parcels of land. That land parcel No.16344 borders other lands including 16345, that much of the land was free but there was a portion of it that had some structures which were relatively new as at the time of his visit. That land parcel No.96243 and 67384 do not exist within the survey and land adjudication records.
18. He further stated that the place where parcel number 16344 is situate is in the area set apart through gazette Notice 3400 of 6<sup>th</sup> November, 1976.
19. On cross-examination, he stated that the decision by the National Land Commission that the Plaintiff was entitled to the land was an error. That the National Land Commission had to do a colligenda according to law to amend the error. That the law allows the NLC Commission to rectify errors through a gazette notice.

### **Submissions**

20. At the close of the evidence, parties filed written submissions on the case.

### **Submissions by the Plaintiff**

21. Written submissions dated 4<sup>th</sup> August, 2024 were filed on behalf of the Plaintiff by the firm of Omollo Achieng & Company Advocates, Counsel submitted that the Plaintiff had demonstrated on a balance of probabilities that the land in question, part of which was purportedly allocated to the 3<sup>rd</sup> Defendant was his family's ancestral land held by his deceased father.
22. That the land which is in Kasule sub-location in Central Kolwa Location was not in any of the places that were subject of Gazette Notice No.3400 dated 6<sup>th</sup> November, 1976. That his family had lived on and used the land since time immemorial until the interference complained of in the suit.
23. That Gazette Notice No.3400 dated 6<sup>th</sup> November, 1976 was common evidence by both sides in the case. That the same was produced by Plaintiff to show that his land was not part of the land that was acquired under the said Gazette Notice. That on the other hand, the Gazette Notice was produced by the 3<sup>rd</sup> Defendant to show that its title was a product of the process that was in the Notice.
24. That the Plaintiff produced maps to shows that the suit land was not in any of the places contained in the Kenya Gazette. That the Defendant did not contest the correctness of the maps.
25. Counsel submitted further that no evidence was given by the Defendant of compliance with section 75 of the old Constitution of Kenya or section 7 of the Repealed Trust *Land Act* on the setting apart of land for public use was demonstrated. That there was no evidence of compensation of the owners of the land that was set apart.
26. That the allocation of the land and subsequent issuance of lease to the 3<sup>rd</sup> Defendant was grossly unprocedural and illegal. That under the repealed Government Lands Act, the power to allocate land



- was vested in the President. That in the present case, the letter of allotment to the 3<sup>rd</sup> Defendant was signed by someone else for the Commissioner of Lands an action that is not supported by law.
27. That the allottee did not comply with terms of offer in accordance with the allotment letter. That the letter of allotment to the 3<sup>rd</sup> Defendant dated 31<sup>st</sup> January, 1991 required the 3<sup>rd</sup> Defendant to accept the offer and pay KShs.1,000,188.35 within 30 days from the date of the letter. That the 3<sup>rd</sup> Defendant did not comply as it did not pay the required amount within the time given in the letter.
  28. Relying on the case of *Jama Musa Hussein -vs- Registrar of Government Lands & 2 Others* [2019] eKLR, Counsel submitted that the principle of indefeasibility of title cannot stand in the face of a challenge to title raised under *the Constitution* and that it is not enough to simply wave a title when faced with a challenge on its legality. That under Section 26 of the *Land Registration Act* and article 40 of *the Constitution*, the law will not protect a title acquired illegally.
  29. Relying on the cases of *National Bank of Kenya Ltd -vs- Wilson Ndolo Ayah* [2009] eKLR and *Odhambo Owiti & Company Advocates -vs- Stanbic Bank Limited* [2015] eKLR, Counsel submitted that it is public policy that courts should not aid in the perpetuation of illegalities and that to uphold anything that the Defendant did would be to countenance the commission of a criminal offence.
  30. On conversion of the land from freehold to a lease, Counsel submitted that there was no proof of compliance with part III of the Registration of Titles Act before the land was brought under the Registration of Titles Act.
  31. Concerning the joint survey report produced by the 5<sup>th</sup> Defendant, Counsel submitted that the same was irrelevant and that its evidential value was below minimum as the same was undated, none of the parties participated in the exercise of making the same and as the same is based on wrong assumptions and misconceptions of the Plaintiff's case.
  32. Counsel urged the court to allow the Plaintiff's case.
  33. No submissions were filed on behalf of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants.

#### **Submissions by the 3<sup>rd</sup> Defendant**

34. Written submission dated 18<sup>th</sup> June, 2024 were filed on behalf of the 3<sup>rd</sup> Defendant by Onsongo and Company Advocates. Counsel submitted that the burden and incidence of proof as provided for under sections 107, 108 and 109 of the *Evidence Act* lay with the Plaintiff to prove his case on a balance of probabilities. Counsel relied on the case of *James Muniu Mucheru -vs- National Bank of Kenya Ltd* [2019]eKLR to support this submission.
35. On ownership of land title No.LR.16344, I.R. NO.83689, Counsel submitted that section 26 *Land Registration Act* which was a reproduction of section 23 of the Registered *Land Act* (RLA) (Cap 300) provides for sanctity and indefeasibility of title to land as long as the registration was obtained lawfully, and procedurally. That the said section of the law was in tandem with article 40 of *the Constitution* which provides for protection to property. That as the registered owner, the 3<sup>rd</sup> Defendant's proprietary rights are protected under Article 40 of *the Constitution*.
36. On whether the 3<sup>rd</sup> Defendant's acquisition of the parcel of land was bona fide, Counsel relied inter alia, on the case of *Katende -vs- Haridar & Company Limited* [2008]2 EA 173 where the court laid down the elements of a bona fide purchaser for value and submitted that the 3<sup>rd</sup> Defendant had brought her case within the parameters set in the said case.



37. Counsel submitted that the purpose of article 40 of *the Constitution* and section 26 of the *Land Registration Act* is preserve and ascertain the sanctity of a registered title to land under the torrens system of land registration which protects the 3<sup>rd</sup> Defendant's title to property.
38. Counsel relied inter alia on the cases of Charles Malenya & 22 Other -vs- Registrar of Titles Nairobi & Another (2012) eKLR, Joseph Ngok -vs- Justice Moiwo Ole Kiiwa Nairobi Civil Application No.60 of 1997 on sanctity of title.
39. On the allegations of fraud against the 3<sup>rd</sup> Defendant Counsel submitted that the 3<sup>rd</sup> Defendant had produced documents showing how it acquired land LR. No.163344, IR 83689 which included extracts of the register and a copy of the Grant.
40. That the Plaintiff has not demonstrated by evidence that there are grounds on the basis of which the court should presume the documents produced in court as exhibits by the 3<sup>rd</sup> and 5<sup>th</sup> Defendants not to be genuine and authentic.
41. Concerning the relationship between IR No.83689, LR 16344 on the one side and No.67384 LR 96243 IR 67384 LR NO16345 on the other, Counsel submitted that according to the evidence of DW2 the Surveyor had found and concluded that there was no spatial relationship between L.R. NO.16344 LR NO.96243 and L.R. No.67384. That parcel numbers 96243 and L.R. No.67384 do not exist in the Survey records of the area.
42. Counsel submitted that according to DW2 it is not possible for I.R. No.83689 L.R. No.16344 to be a resultant parcel of sub-division of L.R. No.96243 and IR 67384.  
That the Plaintiff's claim is not founded on any records.
44. Counsel submitted that the Plaintiff had failed to discharge both the legal and evidential burden of proof and hence his case must fail. Counsel urged the court to dismiss the case.

#### **Submissions by the 4<sup>th</sup> Defendant**

45. On behalf of the 4<sup>th</sup> Defendant written submissions dated 15<sup>th</sup> October, 2024 were filed by Amondi & Company Advocate. Counsel submitted that the Plaintiff has not proved his case against the 4<sup>th</sup> Defendants on the required standards.
46. That the National Land Commission is the only body that is supposed to administer and manage public land on behalf of the National and County Governments and not the County Government. Counsel urged the court to dismiss the suit with costs.

#### **Submissions by the 5<sup>th</sup> Defendant**

47. On behalf of the 5<sup>th</sup> Defendant written submissions dated 11<sup>th</sup> of October 2024 were filed by Njuguna Jacqueline Advocate.
48. Counsel submitted that article 40 of *the Constitution* entitles every person to the right to property subject to the limitations set out therein. That the 3<sup>rd</sup> Defendant is entitled to such protection by the court. That in the absence of evidence of any form of illegality or fraud on the part of the 3<sup>rd</sup> Defendant the land belongs to it (3<sup>rd</sup> Defendant) without any adverse claim.
49. Counsel relied on the case of Henry Wambega & 733 others -vs- Attorney General & 9 Others [2020] eKLR and submitted that the 5<sup>th</sup> Defendant did not violate the Plaintiff's right in any manner by the



office of the Commissioner of Lands allocating the suit land to the 3<sup>rd</sup> Defendant and therefore the Plaintiff's case is unmerited and the same should be dismissed.

### **Issues for Determination**

50. Having read the pleadings filed and considered the evidence adduced and submissions made and taking into account the proposed agreed issues by the Plaintiff dated 6<sup>th</sup> November, 2020 and by the 3<sup>rd</sup> Defendant dated 17<sup>th</sup> November, 2020, I find that the following are the issues that emerge for determination herein;
1. whether or not the Plaintiff's father was owner of a parcel of land measuring 25 Hectares or more at Kasule sub-location as described in the plaint;
  2. whether or not the Defendants unlawfully converted the tenure of the land belonging to the Plaintiff's father from freehold to leasehold under the Registration of Titles Act and subdivided to produce other parcels,
  3. if the answer to (b) above is in the positive, whether or not the said conversion was unlawful,
  4. whether or not allocation and registration of parcel No.IR 83689 L.R No.16344 in favour of the 3<sup>rd</sup> Defendant was lawful,
  5. whether or not the Plaintiff is entitled to the relief sought
  6. Costs of the suit.

### **Analysis and determination**

51. No evidence was placed before court that the plaintiff's father owned a piece of land measuring 25 hectares or more at the place the plaintiff claims the land was situate. There is no evidence that any of the parcels of land mentioned in the plaint was part of the estate of the plaintiff's father.
52. There is also no evidence of conversion of land that was originally freehold land to a leasehold under the Registration of Titles Act. Conversion of a tenure of land from freehold to leasehold is a process that is effected through documents. No documentary evidence was produced in that respect. The Grant produced by the plaintiff in respect of land parcel No. I R 67384 was dated 1/5/1992. It showed that the size of the land in respect thereof was 3.361 Ha. The L.R No. for the same was indicated as L.R No.16345 and was registered in the name of Karen Enterprises Ltd. The contents of the said grant are contrary to the plaintiff's claim that the land that belonged to his father and measuring 25 or more was registered under the Registration of Titles Act as I R 67384. It is also Contrary to the claim by the plaintiff that the land was sub-divided to produce parcel Nos 16344, 16345, 16346, 15299 and 15300. There is no evidence to that effect.
53. From the Grant produced by the plaintiff, parcel No. 16345 is not a product of sub-division of No. I R 67384. Karen Enterprises Ltd the registered owner thereof was not made a party herein.
54. Secondly while the plaintiff claims that parcel No 16344 owned by the 3<sup>rd</sup> defendant was a product of sub-division of the land owned by his father the evidence availed does not support this claim. The Grant produced by the 3<sup>rd</sup> defendant dated 1/2/1991 shows that parcel No. L R 16344 measuring 4.00 Hectares was created before land parcel No. I R 67384. It cannot therefore be a product of sub-division of parcel No.I R 67384. The surveyor, DW2, through the report produced as exhibit stated that he had set out to establish the relationship between inter alia land parcel No. L. R 16344 and I R



67384 and to determine whether there was any spatial relationship between the parcels. He concluded after the exercise that;

There is no spatial relationship between LR No. 16344, 96243 and 16384. The two parcels L.R 96243 and 67384 do not exist in the survey records of the area.”

55. No nexus has been established between the plaintiff’s deceased father (and therefore the plaintiff) and the land parcels the subject of the suit. Further there is no nexus established between the land that the plaintiff claims his father owned and the land registered in the name of the 3<sup>rd</sup> defendant.
56. For the foregoing reasons the court finds in respect of issue no. 1 that it has not been proved that the plaintiff’s father was owner of land measuring 25 Hactares or more at Kasule sublocation as described in the plaint. The court also finds in respect of issue No. 2 that it has not been proved that the Defendants converted the tenure of any land belonging to the plaintiff’s father from freehold to a leasehold under the Registration of titles Act. This finding also answers issue No. 3 of the issues for determination.
57. The 4<sup>th</sup> issue for determination issue for determination is whether or not allocation and registration of the land parcel No. LR 16344 in favour of the 3<sup>rd</sup> defendant was lawful.
58. The plaintiff challenged the 3<sup>rd</sup> defendant’s title on ground of fraud and that the land was not lawfully acquired. It was submitted on behalf of the plaintiff that the title held by the 3<sup>rd</sup> defendant was not covered by the protection in article 40 of *the Constitution* and the provisions of the *Land Registration Act*.
59. Firstly, having found that there is no relationship between the land that the plaintiff claims on behalf of the estate of his father and the land registered in the 3<sup>rd</sup> defendant’s name, it follows that the plaintiff lacks the locus standi to question the propriety of the 3<sup>rd</sup> defendant’s title.
60. The 3<sup>rd</sup> defendant produced documents showing how it acquired the land. These include the Grant and the extract of title and other documents. For instance, the letter dated 16<sup>th</sup> February 2022 from the Ministry of Lands and Physical Planning signed by Director of Surveys and produced but he 3<sup>rd</sup> defendant stating in part that

Our scrutiny of the records shows that L.R No. 16344 was surveyed as a new Grant by S. Nyandimo working as a government surveyor. The Grantee was Kite Sacco, measuring 4.0 Ha vide survey plan (FR) No. 224/103 and authenticated vide slip Ref CT235/Vol 3203544 (copy attached). Also the same was sub-divided to at subplots vide FR No. 325/28 resulting to LR No. 16344/2-98.”

confirmed the evidence of DW2 that parcel No. 16344 was a separate Grant to the 3<sup>rd</sup> Defendant and that the Grant was subjected to the process highlighted in the letter.

61. Allegations of fraud by the plaintiff on the part of the Defendants have not been proved. The standard of proof for fraud is higher than proof on a balance of probabilities. In the case of Kenya Broadcasting Corporation –vs- Housing Finance Company of Kenya Limited & 2 Others (2019)eKLR the Court of Appeal held, inter alia, that fraud must not only be pleaded but must also be strictly proved on a higher standard of proof than that of a balance of probability.
62. In Koinange & 13 others vs Charles Karuga Koinange 1986 KLR at page 23 the court held that:

When fraud is alleged by the Plaintiffs the onus is on the Plaintiffs to discharge the burden of proof. Allegations of fraud must be strictly proved, although the standard of proof may not



be so heavy as to require proof beyond a reasonable doubt, something more than a balance of probabilities is required.”

63. The case of the 3<sup>rd</sup> Defendant was supported by the pleadings, evidence and submissions of the 4<sup>th</sup> and 5<sup>th</sup> Defendants.

64. The court finds that registration of the suit land in favour of 3<sup>rd</sup> defendant was lawful.

The next issue is whether the plaintiff is entitled to the relief sought,

65. The relief sought include, a prayer for the alleged registration of land belonging to the Plaintiff’s father and/or ancestral land under the Registration of Titles Act and subsequent sub-division thereof to be cancelled, a declaration that the suit land is free hold land belonging to the deceased and forms part of the estate of the deceased, an order for restoration of the said land to the original state and in the name of the Plaintiff and an alternative prayer for payment of compensation at equivalent current market value. On the basis of the findings herein, there is no evidence in support of awarding the relief sought.

66. Secondly, the relief sought concerns land parcels No.s 67384, 16344, 16345, 16346, 15299 and 15300. Apart from No. 16344 registered in the name of the 3<sup>rd</sup> Defendant and No. 16345 in the name of Karen Enterprises Ltd the registered owners of the other parcels are not disclosed or made parties in this suit, yet the orders sought if granted will affect their rights to and interests in the said parcels.

67. The plaintiff claimed that the 5<sup>th</sup> Defendant awarded the land to him after hearing a complaint that he lodged with the 5<sup>th</sup> Defendant. To prove this, he produced letter dated 26.11. 2017 ref. NLC/GEN CORRE/VOL.VI/(70). Paragraph 6 of the letter stated as follows

The Commission regularizes or upholds L. R No. 96248 and 67384 to Michael Odera Otom.”

68. In response to this DW2 testified that the Notice by National Land Commission that the land had been upheld to the Plaintiff was erroneous and that the same was later rectified by way of corrigenda.

69. For the foregoing reasons the court finds that the plaintiff is not entitled to the relief sought.

70. Regarding costs, under section 27 of the *Civil Procedure Act*, costs follow the event.

71. The result is that the court finds that the plaintiff has failed to prove his case on a balance of probabilities. The suit is hereby dismissed with costs.

Orders accordingly.

**JUDGEMENT DATED AND SIGNED AT KISUMU AND DELIVERED THIS 8<sup>TH</sup> DAY OF MAY, 2025 VIRTUALLY THROUGH MICROSOFT TEAMS ONLINE APPLICATION.**

**E. ASATI,**

**JUDGE.**

In the presence of:

Maureen - Court Assistant.

Omollo Achieng for the Plaintiff

Onsongo for the 3<sup>rd</sup> Defendant

Nyambeki for the 4<sup>th</sup> Defendant.

