



REPUBLIC OF KENYA



KENYA LAW
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**Ali & 23 others v Kairii & 54 others (Environment & Land Case
E011 of 2021) [2025] KEELC 4471 (KLR) (5 June 2025) (Judgment)**

Neutral citation: [2025] KEELC 4471 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ISILOLO
ENVIRONMENT & LAND CASE E011 OF 2021**

JO MBOYA, J

JUNE 5, 2025

BETWEEN

ABDULLAHI ALI & 23 OTHERS & 23 OTHERS PLAINTIFF

AND

NORMAN KAIRII & 54 OTHERS & 54 OTHERS DEFENDANT

JUDGMENT

1. The Plaintiffs' approached the court vide Plaint dated 7th October 2019 and wherein the plaintiffs' have sought the following reliefs [verbatim]:
 - i. Declaration that parcels of Land No. UNS. BCR Plot No. 20, 24, 31, 33, 35, 39, 43, 48, 54, 69, 71, 73, 75, 77, 81, 83, 92, 94, 95,97,100,101,104 and 105 belongs to the Plaintiffs.'
 - ii. An order of Permanent injunction restraining the Defendants, their agents, servants or anyone acting on their behalf from entering, cultivating, developing, utilizing, fencing, alienating, selling, constructing or in any other way interfering with the Plaintiffs' parcel of Land Nos. 20,24,31,33,35,39,43,48,54,69,71,73,75,77,81,92,94,95,97,100, 101,104 and 105.
 - iii. An Order that the Isiolo County Physical Planner and Isiolo County Surveyor do re-enter the land and carry out a fresh survey and planning in relation to the County Plans and Maps of the respective area where these plots are situated.
 - iv. Costs, interest and any other Relief[s] this Honourable Court deems just and fit to grant.
 - v. Any other relief that this Honourable Court may deem just and fit to grant.
2. The Defendants duly entered appearance and thereafter filed a statement of defence dated 7th April 2021 and wherein same [the defendants] have denied the claims by the Plaintiffs. Furthermore, the Defendants have contended that same have been in lawful occupation and possession of the suit properties for a very long time without any interruption, interference and or disturbance from any



- quarters. Moreover, the defendants have also contended that same have constructed on and developed the suit properties. To this end, the Defendants have therefore posited that same have proprietary rights to and in respect to the suit properties.
3. The matter came up for the usual case conference on the 22nd November 2021, whereupon the advocates for the parties sought for time to file and exchange their List and bundle of documents; further Lists of Witnesses; and the Witness Statement[s]. To this end, the court granted indulgence and directed that the parties do file and exchange their lists and bundle of documents and list of witness within thirty [30] Day[s] days.
 4. The matter subsequently came up on the 15th July 2022 whereupon the parties confirmed that same had duly complied with the provisions of Order 11 of the Civil Procedure Rules, 2010. In particular, the parties intimated to the court that same had filed the list and bundle of documents; List of witnesses; and the witness statements. In this regard, the matter was thereafter confirmed to be ready and ripe for hearing.
 5. The Plaintiffs' case is premised on the evidence of two[2] witnesses namely, Mutabari John Inanga; and Abdullahi Ali. Same testified as PW1 and PW2, respectively.
 6. It was the testimony of PW1 [Mutabari John Inanga] that same is one of the Plaintiffs'. Furthermore, the witness averred that by virtue of being one of the Plaintiffs' same is therefore conversant with the facts for this matter. In addition, the witness testified that same has since recorded a witness statement dated the 7th October 2019; and which witness statement the witness sought to adopt and rely on as his evidence in chief. Instructively, the witness statement dated 7th October 2019 was thereafter constituted as the evidence in chief of the witness.
 7. The witness further adverted to the List and bundle of documents dated the 14th March 2022 and which documents the witness sought to tender and produce before the court. However, the production of the documents was objected to and thus same[documents] were marked for identification.
 8. On cross examination by learned counsel for the Defendants, the Witness [PW1] averred that his Father [now deceased] acquired Plot number 101 Isiolo. Furthermore, the witness testified that the said plot was acquired through a Letter of allotment.
 9. While still under cross examination, the witness testified that the area in question had been advertised for balloting by the County Council of Isiolo [now defunct]. In this regard, the witness averred that following the advertisement his father [now deceased] balloted and won the Plot in question.
 10. It was the further testimony of the witness that same has not availed and or tendered to the court a copy of the ballot. In any event, it was posited that the ballots usually remain with the Council. Nevertheless, the witness testified that same has availed the List of Members [Applicants] who balloted and were thereafter allocated plots.
 11. Additionally, the witness testified that his father died in May 2019. However, the witness averred that before the death of his father, the plot number 101 was transferred to himself and thereafter same [witness] started to pay rates. In particular, the witness averred that he commenced payment of rates in the year 2015.
 12. It was the further testimony of the witness that same did not file any succession cause. Besides, the witness testified that the Letter of allotment which was issued to his father [now deceased] required that payment[s] be made within thirty [30] days. Nevertheless, the witness testified that the payment[s] in question were not made within the stipulated thirty [30] days.



13. While still under cross examination the witness averred that same has tendered and produced before the Court a copy of the Part Development Plan [PDP]. However, the witness conceded that the Part Development Plan does not bear the date when the same [PDP] was prepared.
14. The 2nd witness who testified on behalf of the Plaintiffs' was Abdullahi Ali. Same testified as PW2.
15. It was the testimony of the witness that same is a resident of Isiolo. In addition, the witness averred that same is privy to and knowledgably to the facts of this matter.
16. Furthermore, the witness averred that same has since recorded and filed a witness statement. To this end, the witness referenced the statement dated 7th October 2019; and thereafter sought to adopt and rely on the said witness statement. Suffice it to state that the witness statement under reference was adopted and constituted as the evidence in chief of the witness.
17. Additionally, the witness [PW2] further referenced the List and bundle of documents dated 14th February 2022; and thereafter sought to produce the documents thereunder as exhibits before court. There being no objection to the production of the document[s], same were duly admitted and constituted as exhibits on behalf of the Plaintiffs.
18. With the foregoing testimony, the Plaintiffs' case was closed.
19. The Defendants' case is anchored on the evidence of three [3] witnesses namely, Gerald Meriti, Felix Muthaura Mburunga and Charles Murithi Limbua. Same testified as DW1, DW2 and DW3 respectively.
20. It was the testimony of DW1 [Gerald Miriti] that same is a resident of Waso Location, Red Cross area. In addition, the witness testified that by virtue of his place of domicile, same [Witness] is therefore privy to the facts of this matter.
21. It was the further testimony of the witness that same has since recorded a witness statement dated 14th July 2022. To this end, the witness sought to adopt and rely on the witness statement as his evidence in chief. Suffice it to state that the witness statement was thereafter constituted as the evidence in chief of the witness.
22. On cross examination by Learned Counsel for the Plaintiffs, the witness testified that same is an independent witness. Moreover, the witness averred that same owns land in red cross area. Nevertheless, it was the testimony of the witness that same does not recall the Plot number off head.
23. While still under cross examination, the witness averred that same has not seen the Plaintiffs' documentations concerning their plots. In this regard, the witness testified that same cannot therefore confirm or deny whether the numbers claimed by the Plaintiffs' are genuine or otherwise.
24. On re-examination by Learned counsel for the Defendants, the witness averred that same has been residing in the are since 1978. To this end, the witness stated that he is thus aware of who owns land in the area. Furthermore, the witness testified that the Defendants own land in the area because they [defendants] have houses thereon.
25. The next witness who testified on behalf of the Defendants is Felix Muthaura Mburunga. Same testified as DW2.
26. It was the testimony of the witness [DW2] that same is the 3rd Defendant. In this respect, the witness averred that same is therefore conversant with the facts of the matter.



27. Additionally, the witness testified that same has since recorded a witness statement dated the 14th of July 2022; and which witness statement the witness sought to adopt and rely on. To this end, the witness statement under reference was adopted and constituted as the evidence in chief of the witness.
28. Furthermore, the witness averred that same has a letter dated 17th February 2010 from the Lands office and which letter the witness sought to tender and produce before the court. Besides, the witness also referenced a copy of the death certificate [s] for the deceased Defendants. Same thereafter sought to tender the said certificate[s] of death as Exhibit[s] before the Court.
29. Notably, documents numbers 1, 2,4 and 5 were produced and marked as Exhibits D1 ,2, 4 and 5 respectively. However, documents number 3 was marked as DMFI-3,pending [sic] production by the maker thereof.
30. On cross examination by Learned counsel for the Plaintiffs', the witness averred that same is a resident of Red cross area- Isiolo. Furthermore, the witness testified that same owns a plot measuring 50 by 100 Feet.
31. Moreover, the witness posited that same bought the plot from Daniel Obiri. Additionally, the witness added that a sale agreement was entered into and executed by both himself and the vendor.
32. While still under cross examination, the witness testified that even though the Sale Agreement was reduced into writing same [witness] does not have a copy of the sale agreement before the court. Nevertheless, the witness averred that before he purchased the plot in question he checked and confirmed that the land belonged to Daniel Obiri.
33. On further cross examination, the witness testified that thereafter same was issued with a Part Development Plan [PDP]. To this end, the witness averred that the Part Development Plan was given to him by one Mr. Gitonga, who was workin at the Lands Office.
34. It was the further testimony of the witness that the Part Development Plan was given to him with a covering letter. However, the witness testified that the cover letter did not indicate that the plot in question belonged to or was owned by Daniel obiri.
35. On re-examination by Learned counsel for the Defendants, the witness testified that same bought the land in 2007. Furthermore, the witness added that same has been on the plot since the year 2007.
36. Regarding the Plaintiffs, the witness testified that none of the Plaintiffs reside [live] in the area. In any event, it was the testimony of the witness that none of the 24 Plaintiffs has ever identified him as the person on the Plot.
37. The next witness who testified on behalf of the Defendants was Charles Murithi M'Limbua. The witness averred that same resides at the place called red cross area within Isiolo. Furthermore, the witness averred that same is a pastor.
38. It was the further testimony of the witness that in respect of the instant matter, same has since recorded a witness statement. To this end, the witness referenced his statement and thereafter sought to adopt same as his evidence in chief. Instructively, the witness statement was adopted and constituted as the evidence in chief of the witness.
39. On cross examination by Learned Counsel for the Plaintiffs', the witness testified that same owns two [2] plots of 50 by 100 Feet each. Moreover, the witness averred that the area in question is his ancestral land.



40. While still under cross examination, the witness testified that same has a Part Development Plan [PDP]. Nevertheless, it was the further testimony of the witness that same has never applied to the County Council of Isiolo [now defunct] to be registered as the owner. For good measure, the witness stated that he has not applied to be registered because he has always been on the land.
41. It was the further testimony of the witness that same filled an application Form around 2017. However, the witness stated that same does not have any document before the court to confirm ownership of his Plot. Furthermore, the witness averred that the Land in question originally belonged to his father.
42. On re-examination by Learned Counsel for the Defendants, the witness testified that his father was a resident of red cross area. Moreover, the witness testified that he did not apply to the Council of Isiolo, because he got the land from his father.
43. While still under re-examination, the witness testified that same filled the Council documents in 2017. In addition, the witness testified that the council has never cancelled his Part Development Plan [PDP].
44. With the forgoing testimony, the defendants' case was closed.
45. Upon the close of the hearing, the advocates for the parties sought time to file and exchange written submissions. To this end, the court issued directions pertaining to the filing and exchange of the submissions. Furthermore, the court also circumscribed the timeline[s] for the filing and exchange of the written submissions.
46. The Plaintiffs' filed written submissions dated 7th March 2025; and wherein the Plaintiffs' have highlighted two [2] key issues. The issues highlighted by the Plaintiffs are namely; whether the Plaintiffs are the Legal/ Bonafide owners of the suit plots or otherwise; and Whether the Plaintiffs' are entitled to the reliefs sought or otherwise.
47. The Defendants filed written submissions dated 15th March 2025 and wherein the Defendants have canvassed two [2] salient issues, namely; Whether the Plaintiffs' have proved their claim to the requisite standard of proof or otherwise; and Whether the Defendants' have lawful right[s] to and in respect of the suit plots or otherwise.
48. Having reviewed the pleadings filed on behalf of the parties; having considered the evidence tendered [both oral and documentary] and upon taking into account the written submissions filed on behalf of the parties, I come to the conclusion that the determination of the subject matter turns on two [2] key issues namely; whether the Plaintiffs' have established and proven their case on a balance of probabilities or otherwise; and Whether the Defendants have lawful rights to and in respect of the suit plots or otherwise.
49. Regarding the first issue, it is imperative to recall and reiterate that the Plaintiffs' herein approached the court contending that same are the lawful and Bonafide owners of the suit plots. Furthermore, the Plaintiffs contended that the suit plots fell within the jurisdiction of the County Council of Isiolo [now defunct].
50. It was the further evidence on behalf of the Plaintiffs' that the County Council of Isiolo [now defunct] advertised various plots at the area known as zone B and thereafter invited applications for purposes of balloting. To this end, the Plaintiffs' posited that same headed the invitation and thereafter applied for plots within Zone B- Isiolo town.
51. It was the further evidence of PW2 that the Plaintiffs' herein duly balloted and same were allocated designated plots. In this regard, the witness referenced the Council List containing the names of the



- various Applicants and especially, the Plaintiffs; and which List the witness posited was generated by the County council of Isiolo [now defunct].
52. Additionally, PW2 proceeded to and averred that upon being allocated the various plots the Plaintiffs complied with the requirements culminating into same [Plaintiffs] being issued with Letters of allotment. To this end, PW2 referenced the various Letters of allotment which were tendered and produced as exhibits before the court.
 53. Furthermore, PW2 testified that upon being issued with Letters of allotment, the various Plaintiffs paid the statutory levies including the standard premium and others statutory levies. To this end, PW2 posited that the Plaintiffs are the lawful and registered proprietors/ owners of the suit plots.
 54. On the other hand, the Defendants position was to the effect that what constitute[s] the suit plots was previously ancestral land. Furthermore, it was averred that on the basis of being ancestral land, most of the Defendants inherited the plots from their fathers, while the rest bought/purchased from previous owners.
 55. In addition, it was the Defendants' case that same have been residing on the suit plot for a very long time. In this regard the defendants posited that same have since acquired proprietary rights to the suit plot on the basis of longevity of occupation.
 56. Having taken cognisance of the rival evidence, and arguments on record, I beg to take the following position.
 57. Firstly, the Plaintiffs testified and tendered in evidence assorted documents including the Council List capturing [reflecting] the names of the persons who applied to be allocated plots by the County Council of Isiolo [now defunct]. The list under reference bears the names of the various applicants including the Plaintiffs beforehand. Furthermore, the List under reference also highlights the various plots that were allocated to the designated Plaintiffs.
 58. It is instructive to note that upon being allocated the designated plot[s], the Plaintiffs proceeded to and obtained Letters of allotment relative to the allocated plots. Suffice it to posit that the Letters of allotment were also tendered and produced before the court.
 59. Moreover, the Plaintiffs have also tendered and produced before the court evidence that same variously complied with the conditions contained at the foot of the Letters of allotment and thereafter the County Council of Isiolo [now defunct] proceeded and undertook survey of the designated plots.
 60. It is important to underscore that the documentation that have been tendered and produced before the court on behalf of the plaintiffs are consistent and trace the process of acquisition of the suit plots from the balloting that was commissioned by the County Council of Isiolo [now defunct].
 61. Furthermore, it is important to observe that the legality; legitimacy and the veracity of the Document[s], including the Council List containing the Names of the Applicants; the Letters of allotments and also the Ruling of Honourable Lady Justice Lessit, Judge [as she then was], were never impeached by by Learned Counsel for the Defendants.
 62. Additionally, it is also not lost on the Court that the Defendants herein did not tender and/ or produce any Council List showing that same [Defendants] ever applied to be allocated Plots by the County Council of Isiolo [now defunct].
 63. On the other hand, the Defendants claim to the suit plots is not vindicated by any credible documents. For good measure, it is worthy to recall that the Defendants have contended that what comprises of the suit plots was their ancestral land. However, there is no gainsaying that no evidence was placed before



the court to confirm that the suit plots or better still, the area where the suit plots are situated was ever an ancestral land.

64. Furthermore, it is not lost on this court that the area[s] that fell within the jurisdiction of the previous Local Authorities [the County Council of Isiolo inclusive] comprised of Trust land. To this end, any applicant who desirous to procure a plot was called upon [obliged] to make the requisite application to the designated Local authority. Furthermore, it is the designated Local authority that would then deliberate on [consider] the application and make recommendation[s] for purposes of allotment. [See Section 53 of the Trust [Land Act](#), chapter 288, Laws of Kenya, now repealed]. [See also the Decision in the case of Rinya Hospital Limited versus Town Council of Awendo [2010]eklr]. [See the succinct holding in the case of Funzi Island Developers Limited versus The County Council of Kwale [2014]eklr-per D.K Maraga,JA]
65. Additionally, it is important to highlight that there was a distinction between Trust land and ancestral land. Suffice it to state that whereas trust land was subject to allotment by the Commissioner of lands [now defunct] subject to the recommendations of the designated Local authorities; ancestral land on the other hand, was subject to Land adjudication.[See the provisions of the [Land Consolidation Act](#), Chapter 283; and the [Land Adjudication Act](#), chapter 284, Laws of Kenya; respectively].
66. Bearing the forgoing dichotomy in mind, what becomes apparent is that the Defendants cannot on one hand be heard to say that the suit plots were ancestral land; while on the other hand contending that same applied to be allocated land by the County Council of Isiolo[now defunct]. To my mind, the fluid position[s] being taken by the Defendants does not argur well with the Interests of Justice. Moreover, the conduct of the Defendants constitutes approbation and reprobation at the same time. Surely, the Defendants cannot be allowed to blow hot and cold; or better still, to switch position[s] at will and for convenience.
67. Furthermore, it is also worthy to state that contentions by the Defendants are incapable of reconciliation. Notably one cannot stake a claim to a plot on the basis of ancestry [ancestral land] and at the same time procure a Part Development Plan [sic] to underpin his ownership.
68. Nevertheless, it is apposite to state that a Part Development Plan [PDP] does issue as one of the preliminary documents underpinning the alienation of Government Land [now Public land]. Same [part development plan] was duly provided for vide Section 3 of the Physical Planning Act, Chapter 286, Laws of Kenya [now repealed].
69. Moreover, the legal implication[s] and the role played by a Part Development Plan was elucidated by the Supreme Court of Kenya [the apex Court] in the case of Dina Management Limited v County Government of Mombasa & 5 others (Petition 8 (E010) of 2021) [2023] KESC 30 (KLR) (Constitutional and Human Rights) (21 April 2023) (Judgment) where the Court expounded on the issue as hereunder;
 104. The procedure for the allocation of unalienated land is laid out by the Environment and Land Court in Nelson Kazungu Chai & 9 others v Pwani University [2014] eKLR as follows:“...It is trite law that under the repealed Government Lands Act, a Part Development Plan must be drawn and approved by the Commissioner of Lands or the Minister for lands before any unalienated Government land could be allocated. After a Part Development Plan (PDP) has been drawn, a letter of allotment based on the approved PDP is then issued to the allottees.
 131. It is only after the issuance of the letter of allotment, and the compliance of the terms therein, that a cadastral survey can be conducted for the purpose of issuance of a certificate of lease. This procedural requirement was confirmed by the surveyor, PW3. The process was also reinstated



in the case of African Line Transport Co Ltd v Attorney General, Mombasa HCCC No 276 of 2013 where Njagi J held as follows: “Secondly, all the defence witnesses were unanimous that in the normal course of events, planning comes first, then surveying follows. A letter of allotment is invariably accompanied by a PDP with a definite number. These are then taken to the department of survey, who undertake the surveying. Once the surveying is complete, it is then referred to the Director of Surveys for authentication and approval. Thereafter, a land reference number is issued in respect of the plot 132. A part development plan (PDP) can only be prepared in respect to Government land that has not been alienated or surveyed...”

105. This process is restated in African Line Transport Co Ltd v Attorney General, Mombasa, HCCC No 276 of 2003 [2007] eKLR where it was held that planning comes first, then surveying. A letter of allotment is invariably accompanied by a PDP with a definite number, which would then be taken to the Department of Survey for surveying. Thereafter, it is then referred to the Director of Surveys for authentication and approval. It is after that process that a land reference number is issued in respect of the plot.
106. We note that the suit property was allocated to HE Daniel T Arap Moi who was not a party to the suit. The 2nd to 6th respondents on the other hand at the trial court in the replying affidavit of Gordon Odeka Ochieng in response to ELC Petition 12 of 2017 stated that certain documents that were required to support the allocation of the suit property to HE Daniel T Arap Moi were missing. These were, “the letter of application addressed to the Commissioner of Lands seeking to be allocated the suit land; and a Part Development Plan (PDP) showing the suit property in relation to the neighbouring parcels of land.”
70. Simply put, the Defendants herein cannot be heard to say that the area in question, where the suit plots are situated was/is ancestral land while on the other hand the same Defendants are waving/ propagating [sic] Part Development Plans to underpin their rights thereto.
71. The conflicting and contradicting positions taken by the Defendants [and which is evident in the evidence of DW2 and DW3,] drives me to the conclusion that the Defendants have not established the root of their claims. [See the erudite exposition of the Law in the case of Caroline Awinja Ochieng versus Anne Mbithe [2015]eklr, as per Justice J.L Onguto, Judge [may his soul rest in peace]
72. Furthermore, it is instructive to observe that where two parties are laying a claim to the same piece of land or plot, then it behoves either party to place before the court credible evidence demonstrating the process underpinning their respective claims. For good measure, if the disputed land has been registered then the claimant must place before the court the transactional documents that were relied upon and or deployed in acquiring [sic] the Certificate of title, or the Certificate of Lease [whichever is applicable].
73. On the contrary, where the land in question has not attracted registration under the obtaining Legal regime and no Certificate of Title has benn issued; then the claimants must place before the Court the documentation showing their entitlement. Nevertheless, the documentation must be genuine and verifiable. [See the decision of the Court of Appeal in the case of Elizabethe Wambui Githinji and 29 Others versus Kenya Urban Roads Authority and Another [2019] eklr, as per Justice [Professor] Otieno-Odek; on the aspect that entitlement gives rise to Title and not vice versa]
74. Be that as it may, the importance of process in the acquisition of Land was expounded by the Court of Appeal in the case of Presbyterian Foundation v Kibera Siranga Self Help Group Nursery School



(Civil Appeal 64 of 2014) [2023] KECA 371 (KLR) (31 March 2023) (Judgment) where the Court re-affirmed various decisions and stated thus:

“The best evidence of ownership of immovable property is the title deed to it and that is why the question of the root of title is important. Root of title is the deed to which title to a property is ultimately traced to prove that the owner has good title. Accordingly, when there are competing interests as in this case, the parties are required to give evidence of title, starting with a "good root of title." A good root of title and an unbroken chain of ownership is required. To be a good root of title, a document must satisfy each of the following requirements:

- a. it must deal with or show the origin of the ownership of the whole legal and equitable interest in the land in question;
- (b) it must contain a recognizable description of the property;
- (c) it must not contain anything that casts any doubt on the title.”

75. Flowing from the forgoing analysis, my answer to issue number one [1] is two- fold. Firstly, the Plaintiffs herein have duly accounted for and or placed before the court the documentation underpinning their claim to the suit plots. In particular, the Plaintiffs’ adduced the List from the County Council of Isiolo [now defunct] bespeaking the allotment of the diverse Plots.
76. Secondly, the area where the suit plots which were allocated is situate, was never ancestral land. On the contrary, the area in question was Trust land which fell within the jurisdiction of the county council of Isiolo [now defunct]; and this explains why the County Council of Isiolo, invited applications and thereafter commissioned balloting. The process could only have been undertaken in respect to trust land and not[sic] ancestral land.
77. Next is the issue pertaining to whether the Defendants have any legal or legitimate claims to the suit plots or otherwise. While discussing issue number one [1] above, I have already pointed out that the evidence tendered by and on behalf of the Defendant was wrought and replete with inherent contradictions. Suffice it to recall that on one hand, the Defendants are staking/ hinging their claim to the suit plot[s]/ Land on the basis of being ancestral land while on the other hand same are also espousing Part Development Plans to underpin their right[s].
78. Other than the contradictions that have been highlighted hereinbefore, there is one outstanding issue which impacts on the Defendants claim to and in respect of the suit plots. To this end, I shall now venture forward to deal with that singular issue.
79. Suffice it to state that the Defendants herein filed a Petition, namely; Meru HCC Petition No. 88 of 2011 and wherein the Defendants [who were the Petitioners] sued inter alia the County Council of Isiolo [now defunct] pertaining to and concerning the allotment of the plots in question.
80. Additionally, the Defendants herein proceeded to and filed an application for temporary injunction and conservatory orders seeking to prohibit the allotment[s] of the suit plots. Instructively, the application filed by the Defendants [Petitioners in the named Petition] was heard and disposed of vide ruling rendered on the 3rd May 2012. [See copy of the Ruling tendered and produced as an Exhibit on behalf of the Plaintiffs].



81. In the course of disposing of the application filed by the said Petitioners, now the Defendants, the Learned Judge [Lady Justice Lesit, Judge as she then was] rendered herself as hereunder:

“The petitioners have not established that they have a prima facie case. They have claimed they otherwise bought or squatted on the land owned by John Karu. There is nothing before the court to show that the said John Karu had a good title to the land. ‘If they bought’ the land from him, then there is no prima facie proof that he passed a good title to them. The petitioners have not established that they are legally on the land in question.

It is the 2nd respondent’s case that the petitioners entered onto the land after planning and allotment of the land was completed in 1992 and that none of the petitioners were beneficiaries of the exercise.”

82. Moreover, the learned Judge proceeded and observed as thus;

“The petitioners are not candid nor disclosed the years which they occupied the suit land.

83. Having analysed the totality of the Petitioner’s case, the learned Judge disposed the application by stating thus:

“In this case, the court is not satisfied that the petitioners have a good case or good title. What is coming out is that they moved into the council land without any legal right and that by the time they moved in, the land had already been allocated to others.”

84. From the succinct and erudite exposition of the law captured at the foot of the Ruling [supra], there is no gainsaying that the Defendants herein [who were the Petitioners] have no good title to the suit plots. Furthermore, the Defendants herein have continued to propagate falsehood[s] and misrepresentation[s] in an endeavour to defraud the cause of justice. Such conduct constitutes abuse of the Due process of the Court. [See the holding in the case of Muchanga Investments Limited versus Safaris Africa [Unlimited] Limited [2009] eKLR].

85. Finally, it is also imperative to underscore that the decision that was rendered by Lady Justice Lesit [Judge as she then was] was a decision in rem. The said decision clearly stated to the whole world that the petitioners [now Defendants] did not hold any good title to the land.

86. By dint of the provisions of Section 44 of the *Evidence Act*, Chapter 80 ILws of Kenya, it is common ground that the said decision holds sway to date. To this end, the Defendants cannot dis-ingenuously revert to court and regurgitate the same position which had been determined by a Court of competent jurisdiction.

87. Before concluding on this matter and for ease of appreciation, it suffices to reproduce the provisions of Section 44 of the *Evidence Act* [supra]. The said section stipulates as hereunder:

- (1) A final judgment, order or decree of a competent court which confers upon or takes away from any person any legal character, or which declares any person to be entitled to any such character, or to be entitled to any specific thing, not as against any specified person but absolutely, is admissible when the existence of any such legal character, or the title of any such person to any such thing, is admissible.
- (2) Such judgment, order or decree is conclusive proof—



- (a) that any legal character which it confers accrued at the time when such judgment, order or decree came into operation;
- (b) that any legal character to which it declares any such person to be entitled accrued to that person at the time when such judgment, order or decree declares it to have accrued to that person;
- (b) that any legal character which it takes away from any such person ceased at the time from which such judgment, order or decree declared that it had ceased or should cease;
- (d) that anything to which it declares any person to be so entitled was the property of that person at the time from which such judgment, order or decree declares that it had been or should be his property.

88. Flowing from the forgoing analysis, there is no gainsaying that the claims being postulated by the Defendants herein have long been determined. The declaration by lady Justice Lesit suffice[s]. In this regard, I find and hold that the defendants have no legitimate claims to and in respect to and of the suit plots.

Final Disposition:

89. Having appraised and analysed the thematic issues that were highlighted elsewhere in the body of the Judgment and upon consideration of the applicable law, I come to the conclusion that the Plaintiffs have established their claim[s] to the suit plots on a balance of probabilities. [See Miller versus the Minister of Pensions 1947 ALL EC 372].

90. Consequently, and in the premises, the final orders that commend themselves to the Court are as hereunder;

- i. A declaration be and is hereby issued that parcels of Land No. UNS. BCR PLOT NO. 20, 24, 31, 33, 35, 39, 43, 48, 54, 69, 71, 73, 75, 77, 81, 83, 92, 94, 95,97,100,101,104 and 105 belongs to the Plaintiffs.
- ii. An order be and is hereby issued directing the Physical planner and County Surveyor- Isiolo County Government respectively to proceed and undertake fresh planning and consequential survey in respect of the suit plots using the county plans and the survey Plans [FR] for the area and thereafter to delineate the boundaries of the suit plots.
- iii. An order of Permanent injunction be and is hereby issued restraining the defendants, their agents, servants or anyone acting on their behalf from entering, cultivating, developing, utilizing, fencing, alienating, selling, constructing or in any other way interfering with the plaintiffs' parcel of land No 20,24,31,33,35,39,43,48,54,69,71,73,75,77,81,92,94,95,97,100, 101,104 and 105.
- iv. For the sake of finality and taking into account the provisions of section 13(7) of the *Environment and Land Court Act* 2011, it is hereby ordered that in the event the Defendants or any of the Defendants is in occupation of the suit plots same shall be evicted therefrom. In this regard, an Eviction order shall issue.
- v. Cost[s] of the suit be and are hereby awarded to the plaintiffs and same shall be borne by the Defendants.



- vi. The Cost[s] in terms of clause[v] above shall be agreed upon and in default be taxed in the conventional manner.

91. It is so ordered.

DATED, SIGNED AND DELIVERED AT ISIOLO THIS 5TH DAY OF JUNE 2025

OGUTTU MBOYA, FCIArb; CPM [MTI-EA]

JUDGE

In the presence of:

Ms Mukami- Court Assistant.

N/A for the Plaintiffs.

Mr. Mwirigi Kaburu for the Defendants.

