



Isiolo Vision of Hope Youth Development Programme CBO (Suing Through its Official Hussein Halkano (Chairman), Abdi Yusuf (Secretary) and Abdi Dadacha (Treasurer)) v Musa & 4 others (Environment & Land Case E001 of 2021) [2025] KEELC 4421 (KLR) (5 June 2025) (Judgment)

Neutral citation: [2025] KEELC 4421 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ISILO
ENVIRONMENT & LAND CASE E001 OF 2021**

JO MBOYA, J

JUNE 5, 2025

BETWEEN

**ISILO VISION OF HOPE YOUTH DEVELOPMENT PROGRAMME
CBO PLAINTIFF**

**SUING THROUGH ITS OFFICIAL HUSSEIN HALKANO (CHAIRMAN), ABDI
YUSUF (SECRETARY) AND ADBI DADACHA (TREASURER)**

AND

BISHAR MUSA 1ST DEFENDANT

THE PHYSICAL PLANNER, ISILO COUNTY 2ND DEFENDANT

THE LAND REGISTRAR, ISILO COUNTY 3RD DEFENDANT

THE COUNTY GOVERNMENT OF ISILO 4TH DEFENDANT

THE HON ATTORNEY GENERAL 5TH DEFENDANT

JUDGMENT

1. The Plaintiff [which is a community-based organization] has brought the suit through its official; and wherein same [CBO] has sought the following reliefs [verbatim]:
 - i. A declaration that the parcel of land known as PDP NO. ISL/117/07/67 D, E & F measuring approximately 15 acres belong to the Plaintiff CBO
 - ii. A declaration that the letter of allotment to parcels of land No. PDP NO. ISL/117/97/67 D, E & F in the 1st defendant's name be cancelled immediately and returned into the names of the Plaintiff.



- iii. An order of Permanent injunction restraining all the defendants, their agents, servants or anyone acting on their behalf from entering, cultivating, developing, utilizing, fencing, alienating, selling, constructing or any other way interfering with the Plaintiffs' parcels of land know as PDP NO. ISL/117/97/67 D, E,& F
 - iv. Costs, interest and any other relief 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 1st Defendant duly entered appearance and thereafter filed a defence and counterclaim dated 8th November 2020. Vide the counterclaim, the 1st Defendant has sought the following reliefs:
 - i. A permanent injunction restraining the plaintiffs whether by themselves, their agents, servants and or any other person working under their instructions from entering, demolishing and or in any other way interfering with the 1st defendant's proprietor rights over plot no. E Kiwanjani Isiolo County.
 - ii. Cost of this suit.
 - iii. Any other relief this Honourable court may deem fit and just to grant.
3. The 2nd and 4th Defendants duly entered appearance and thereafter filed a statement of defence dated 16TH November 2021 and wherein the said Defendants denied the claims by the Plaintiff. Furthermore, the 2nd and 4th Defendants contended that the Plaintiff herein had not been allocated the suit plot. Moreover, it was averred that the minutes of the County Council of Isiolo [now defunct] together with documentations relied upon by the Plaintiffs, are forgeries.
4. The 3rd and 5th Defendants neither entered appearance nor filed any statement of defence. Nevertheless, it is instructive to highlight that the Plaintiff's claim against the 3rd and 5th defendant[s] was subsequently withdrawn. [See the orders of the court made on the 5th March 2025].
5. The instant matter came up for case conference on the 24th January 2023 whereupon the advocates for the parties [excluding the 3rd and 5th defendants] confirmed that same had duly filed the requisite pleadings; list and bundle of documents; list of witnesses and witness statements. Furthermore, the advocates also confirmed that the suit was ready for hearing. In this regard, the matter was duly confirmed as being ready for hearing.
6. The Plaintiff's case is premised on the evidence of three [3] witnesses namely; Hussein Halkano Jillo, Cheruyot Mathew Kimutai and Solomon Marangu, respectively.
7. It was the testimony of PW1 [Hussein Halkano Jillo] that same is the chairperson of Isiolo Vision of Hope organisation. Furthermore, the witness averred that Isiolo Vision of Hope is a Community-Based Organisation [CBO]. In addition, the witness averred that the organisation has 25 members.
8. It was the further testimony of the witness that same has been given authority by the membership of the organisation to given evidence before the court. Moreover, the witness averred that same is conversant with the facts of this case. To this end, the witness testified that same has since recorded and filed a witness statement dated 20th September 2021; and which witness statement the witness sought to adopt and rely on as his evidence in chief. Instructively, the witness statement under reference was duly adopted and constituted as the evidence in chief of the witness.



9. The witness further averred that the Plaintiff herein has also filed a list and bundle of documents dated 20th September 2021 containing Fifteen [15] documents. Furthermore, the witness sought to tender and produce the various documents at the foot of the list and bundle of documents.
10. However, the application on behalf of the witness to tender and produce the various documents was objected to by learned counsel for the 2nd and 4th defendants. In this regard, only documents number 1, 2, 9 and 13 were produced and admitted in evidence. Suffice to state that the rest of the documents were marked for identification for productions by the makers.
11. The witness under reference was thereafter stood down. Subsequently, the witness was recalled and same proceeded with his testimony in Chief.
12. It was the testimony of the witness that same has filed before the court various document[s] including the revenue receipt dated 10th April 1997; 22nd January 1999; 6th May 2019; and which receipts the witness sought to produce and tender before the court as Exhibits.
13. Nevertheless, an objection was taken by learned counsel for the 1st, 2nd and 4th defendants. To this end, a ruling was thereafter crafted and rendered by the court. For good measure, the objection was upheld in so far as the documents under reference had already been objected to and the objection was upheld by Honourable Justice Muchuki Njoroge [as he then was].
14. On cross-examination by learned counsel for the 1st Defendant, the witness averred that same is the chairperson of the Plaintiff organisation. Nevertheless, the witness stated that the documents which he has tendered and produced before the court showed that he is the secretary and not the chairperson.
15. While still under cross-examination, the witness testified that even though same stated that he has the authority on behalf of the organisation, the authority has neither been produced nor availed to the court.
16. It was the further testimony of the witness that the Plaintiff organisation was registered in 1996. To this end, the witness averred that same has since tendered and produced a copy of the Certificate of the group [read, the Organisation].
17. Moreover, the witness testified that the organization applied to be allocated the land in question. However, the witness conceded that same has not availed the application letter before the court. Furthermore, the witness also averred that same has not tendered the minutes of the council approving the Plaintiff's application for allotment of land.
18. While still under cross examination, the witness testified that same has not also produced any letter of allotment. In particular, the witness testified that the Plaintiff did not procure a letter of allotment. Nevertheless, the witness testified that the Plaintiff was issued with part development plan [PDP].
19. It was the further testimony of the witness that the Plaintiff herein discovered that the 1st defendant had entered onto the land in the year 2012. Nevertheless, the witness acknowledged that the suit beforehand was filed in 2021.
20. On cross-examination by learned counsel for the 2nd and 4th defendants, the witness [PW1] averred that same is aware that the 2nd and 4th defendants have filed a list and bundle of documents. Furthermore, the witness confirmed that same has since seen a copy of the certified minutes generated on behalf of the County Council of Isiolo. In particular, the witness acknowledged that same has seen minutes number 5 item 18. Moreover, the witness admitted that item 18 relates to an application made by someone else and not the Plaintiff.



21. It was the further testimony of the witness that same is aware that the Plaintiff made an application of allotment of land. However, the witness conceded that item number 18 of minute 5 does not relate to an application by the Plaintiffs. In any event, the witness testified that save for item 18 of minute number 5, the rest of the minutes on the documents by the 2nd and 4th defendants correspond with the one marked on behalf of the Plaintiff herein.
22. On cross-examination by learned counsel for the 3rd and 5th defendants, the witness averred that the Plaintiff is a duly registered community-based organisation. Furthermore, the witness testified that the Plaintiff herein was issued with a part development plan. Moreover, the witness averred that the land in question has been surveyed. Nevertheless, the witness acknowledged that same [Plaintiff] was never issued with a beacon certificate.
23. While still under cross-examination, the witness avers that the part development plan which same produced before the court has a reference number. To this end, the witness averred that the reference number is 117/97. Furthermore, the witness testified that the Plaintiff has since commenced the process of procuring a lease over the suit property.
24. It was the further testimony of the witness that same does not know whether anyone has since obtained a lease in respect of the suit property. In any event, the witness testified that same does not know why the Plaintiff has sued the Land Registrar. Furthermore, the witness added that the Plaintiff has no claim against the Land Registrar.
25. On re-examination, the witness testified that same filed/ lodged the minutes of the County Council of Isiolo [now defunct]. Moreover, the witness averred that the minutes under reference are before the court. Nevertheless, the witness testified that the minutes which were filed by the Plaintiff are different from the ones lodged by the 2nd and 4th defendants.
26. While still under re-examination, the witness testified that the Plaintiff made an application to be allocated land. Furthermore, the witness averred that the application for allotment was considered and forms part of the minutes. In addition, the witness stated that the application for allotment of land has been referenced vide the minutes.
27. The next witness who testified on behalf of the Plaintiff was Cheruyot Mathew Kimutai. Same testified as PW2.
28. It was the testimony of the witness [PW2] that same is the county Physical Planner Isiolo County. The witness averred that by virtue of his office [portfolio] same is knowledgeable about matters pertaining to preparation of Part Development Plans.
29. Upon being shown a Part Development Plan dated 27th August 1997, the witness averred that the document was prepared by officers working in the physical planning department. Nevertheless, the witness averred that same never worked with the officers who prepared the said part development plan.
30. It was the further testimony of the witness that same was willing to produce the part development plan. To this end, the part development plan [PDP] was duly produced and marked as exhibit P4.
31. On cross-examination by learned counsel for the 1st Defendant, the witness averred that the said document [p4] is the copy which was with the county government. Furthermore, the witness testified that the makers of the documents were working with the Ministry of Lands and Physical Planning.
32. While still under cross-examination, the witness averred that same did not work with the said officers. Furthermore, the witness added that same is not conversant with the handwriting and signatures of the



- said officers. To this end, the witness averred that same is therefore not able to confirm the authenticity or otherwise of the signatures.
33. It was the further testimony of the witness that the documents which the Plaintiff's advocate has shown to him[witness] correspond with the records obtained in his offices. However, the witness added that same has not carried any certified copy of the part development Plan [PDP] to the court.
 34. While still under cross-examination, the witness testified that a part development plan had to be approved by various departments including the director of physical planning and the commissioner of lands [now defunct]. However, the witness averred that the part development plan before the court has not been approved by the director of physical planning or the commissioner of lands.
 35. On cross examination by learned counsel for the 2nd and 4th Defendants, the witness averred that the map which same has produced reflects 6 plots/ parcels of land. However, the witness testified that same does not know the aggregate acreage of the 6 plots. Moreover, the witness testified that in the course of looking into this matter, same came across some letter of allotment. However, the witness clarified that same cannot recollect the date[s] on the letters of allotment.
 36. It was the further testimony of the witness that same however did not come across any letter of allotment in respect to the 6 plots referenced in the map produced. Furthermore, the witness testified that apart from the document tendered and produced same[witness] did not find any other complimenting documents in the department of physical planning.
 37. Additionally, the witness averred that in the absence of the mandatory signatures of the director of physical planning and the commissioner of lands the document produced[Exhibit 4] is invalid.
 38. On cross-examination by learned counsel for the 3rd and 5th defendants [Hon. Attorney General] the witness averred that the document in question was prepared by the Ministry of Lands. Nevertheless, the witness testified that the function of preparing a part development plan has now been devolved.
 39. While still under cross-examination, the witness averred that the part development plan needed to be approved by the director of physical planning and the commissioner of lands. However, the witness conceded that the part development plan before the court was neither signed by the director of physical planning nor approved by the commissioner of land.
 40. On re-examination by learned counsel of the Plaintiff, the witness averred that the part development plan has a stamp dated 2nd March 1998. Furthermore, the witness testified that once a plan is prepared a circulated and gazetted, same is forwarded to the director of physical planning and the commissioner of lands.
 41. While still under re-examination, the witness averred that it's not his duty/ obligation to know [ascertain] why the part development plan has not been approved.
 42. The next witness who testified on behalf of the Plaintiff was Solomon Marangu. Same testified as Pw3.
 43. It was the testimony of the witness that same is a retired officer. In addition, the witness averred that same used to work as an administrative officer with the County Council of Isiolo [now defunct]. Furthermore, the witness averred that same is before the court to produce the minutes of the county council of Isiolo dated 6th May 1997. However, the witness averred that the minutes in question are dated 20th June 1997.
 44. Be that as it may, the endeavour to produce the minutes under reference was objected to culminating into a ruling being rendered by the court. Where the court observed that the minutes under reference



were neither certified in accordance with the law or otherwise. In this regard, and taking into account the provision of section 80 of the *Evidence Act*, Chapter 80 Laws of Kenya the objection was upheld.

45. With the forgoing testimony the Plaintiff's case was closed.
46. The 1st defendant's case is premised on the evidence of one witness, namely; Bishar Musa. Same testified as DW 1.
47. It was the testimony of the witness that same is the 1st defendant in the matter. Furthermore, the witness testified that by virtue of being a party in respect of the instant matter, same is therefore conversant with the facts of the case. In addition, the witness averred that same has since recorded and filed a witness statement dated 2nd June 2023 and which witness statement the witness sought to adopt and rely on as his evidence in chief. To this end, the witness statement dated 2nd June 2023 was duly adopted and constituted as the evidence in chief of the witness.
48. Furthermore, the witness also averred that same has filed a list and bundle of documents dated 2nd June 2023 containing fourteen [14] documents which the witness sought to tender and produce before the court. The production of the various documents was objected to culminating into a ruling being rendered by the court, whereupon documents number 1 and 2 were marked for identification [DMFI-1 and 2]. Nevertheless, the rest of the documents, namely; documents number 3 – 14, were produced and admitted as exhibits D3 – D14, respectively.
49. On cross-examination by the learned counsel for the Plaintiff, the witness averred that the suit plot was allocated unto him. Furthermore, the witness averred that same is referenced as Bishar Maalim Musa as well as Bishar Musa. Moreover, the witness averred that both names refer to himself.
50. It was the further testimony of the witness that same wrote an application letter to the County Council of Isiolo [now defunct] to be allocated the land. However, it was the testimony of the witness that the application letter has not been produced before the court.
51. While still under cross-examination, the witness averred that his application for allotment of land was duly considered by the County Council of Isiolo and same was duly minuted. To this end, the witness referenced the minutes of the Council which had been produced before the court.
52. On further cross-examination, the witness testified that same was also issued with a part development plan. In addition, the witness averred that the part development plan was duly approved and same has availed a letter confirming the allotment of land.
53. It was the further testimony of the witness that same was duly allocated the plot. To this end, the witness referenced the letter of allotment dated 28th January 1998. Moreover, the witness averred that same thereafter complied with the terms and conditions of letter of allotment. In particular, the witness averred that same accepted the letter of allotment and also paid the standard premium.
54. While still under cross-examination, the witness testified that same has availed various receipts showing payments of the standard premium as well as rates to the County Council of Isiolo. Moreover, the witness also referenced the rates clearance certificate which was issued by the County council.
55. On re-examination, the witness averred that same was lawfully allocated the suit plot by the county council of Isiolo. Besides, the witness averred that same [DW1] thereafter entered upon and took possession of the suit plot in the year 2020. For good measure, the witness reiterated that it is him who is in occupation of the suit property.
56. Additionally, the witness testified that same was lawfully issued with a letter of allotment. To this end, the witness referenced the letter of allotment dated 10/1/1998 which has been tendered and produced



- before the court. In any event, the witness averred that his letter of allotment has never been cancelled and or revoked.
57. With the foregoing testimony, the 1st Defendant's case was duly closed.
 58. The 2nd and 4th Defendants' case is premised [anchored] on the evidence of one witness, namely; Yusuf Mohammed Galgalo. Same testified as DW 2.
 59. It was the testimony of the witness [DW2] that same is currently the CEC for Agriculture, Livestock and Fisheries at the County Government of Isiolo. Nevertheless, the witness averred that previously same was the chief officer – land at the County Government of Isiolo.
 60. It was the further testimony of the witness that same is conversant with the facts of this matter. Moreover, the witness added that same has since recorded a witness statement dated 21/10/2022, and which witness statement the witness sought to adopt and rely on as his evidence in chief. Instructively, the witness statements under reference was duly adopted and constituted as the evidence in chief.
 61. Furthermore, the witness referenced the list and bundle of documents dated 21/10/2022 containing one (1) document, which document the witness sought to tender and adduce in evidence. There being no objection to documents, same was admitted and marked as exhibit D1 on behalf of the 2nd and 4th defendants.
 62. It was the further testimony of the witness that same is aware that the 2nd and 4th defendants have filed a statement of defence. To this end, the witness referenced the statement of defence dated 16/11/2021; and thereafter sought to adopt and rely on the contents of the said statement of defence.
 63. On cross-examination by learned counsel for the Plaintiff, the witness averred that same had seen the minutes that were referenced by the Plaintiff. Furthermore, the witness averred that the minutes referenced by the Plaintiff were forgeries. On the contrary, the witness averred that same has produced before the court the correct minutes of the County Council of Isiolo [now defunct] relative to what transpired in respect to the suit property.
 64. On further cross-examination, the witness averred that even though same states that the minutes referenced by the Plaintiffs were forgeries, same [minutes] have not been subjected to forensic examination.
 65. It was the further testimony of the witness that the County Government of Isiolo took over and has the record of the County Council of Isiolo. To this end, the witness averred that on the basis of the documents that are under the custody of the County Government, same [witness] is capable of verifying the authenticity of the minutes produced by the 2nd and 4th Defendants.
 66. On Re-examination, the witness averred that there is only one set of the minutes that were generated by the county council of Isiolo. To this end, the witness referenced the minute dated 20/6/1997, which same has tendered and produced before the court.
 67. In any event the witness averred that the said minutes are the only valid and lawful minute[s] of the County Council of Isiolo.
 68. With the foregoing testimony, the 2nd and 4th Defendants' case was closed.
 69. The 3rd and 5th Defendants had been sued in respect of the instant matter. Nevertheless, the case against the 3rd and 5th defendants was subsequently withdrawn. For good measure, the case against the 3rd and 5th defendants was withdrawn on the 5/3/2025.



70. Upon the close of the hearing, the advocates for the parties sought time to file and exchange written submissions. To this end, the court proceeded to and prescribed the timelines for the filing and exchange of the written submissions.
71. The Plaintiff filed written submissions dated 20th March 2025; and wherein same raised and canvassed two [2] salient issues. The issues canvassed by the plaintiff are, namely: whether the Plaintiff is the legal and bona-fide owner of all that parcel of land known as PDP No. ISL/117/97/67D, E&F measuring approximately 15 acres; and whether the Plaintiff is entitled to the reliefs sought at the foot of the Plaintiff.
72. The 1st Defendant filed written submissions dated 4th April 2025 and wherein same has canvassed four [4] salient issues namely; whether the Plaintiff has the legal capacity to file this suit by itself and whether the suit is properly before the court; whether the Plaintiff has established and demonstrated protectable interest in the suit property; whether the Plaintiff has established its claim of fraud and or illegality against the defendants; and whether the Plaintiff is entitled to that reliefs sought or otherwise.
73. The 2nd and 4th Defendants filed written submissions dated 3rd April 2025; and wherein same has highlighted and canvassed two [2] salient issues, namely; whether the Plaintiff can rely upon and premise its claim on the basis of documents which were marked for identification or otherwise; and whether the Plaintiff has established its claim as pertains to ownership of the suit property or otherwise.
74. Having reviewed the pleadings filed by and on behalf of the parties; having taken into account the evidence tendered [both oral and documentary] and upon consideration of the written submissions filed on behalf of the respective parties, I come to the conclusion that the determination of the suit beforehand turns on three [3] key issues namely; whether the Plaintiff has established and proven its ownership of the suit properties or otherwise; whether the counterclaim by the 1st defendant has been established; and what reliefs [if any] ought to be granted.
75. Regarding the 1st issue, namely; whether the Plaintiff has established and proven its ownership of the suit properties or otherwise, it is imperative to recall and reiterate that it is the Plaintiff who approached the court contending that same [plaintiff] is the lawful and legitimate proprietor of the suit properties. To this end, there is no gainsaying that the Plaintiff was duty bound to place before the court plausible, cogent and credible evidence to demonstrate that same is lawfully entitled to the suit property.
76. In its endeavour to demonstrate ownership over and in respect of the suit property, the Plaintiff herein filed various documents at the foot of the list dated 20th September 2021. However, it is instructive to note that when the Plaintiff's key witness namely PW1 testified before the court same [witness] was only able to tender and produce documents number 1[register of members of the Plaintiff organization; document number 2 [certificate of registration of the Plaintiff as a CBO]; document number 9 [Chief's letter dated 1st July 1997] and document number 13 [copies of the summon/letters dated 12/10/2018 and 19/10/2018] respectively.
77. Pertinently, the Plaintiff did not tender and or produce the rest of the documents adverted to at the foot of the list and bundle of documents dated 20/9/2021. For good measure, the rest of the documents were marked for identification [PMFI] pending production by the makers.
78. Nevertheless, it is not lost on the court that the only other document which was tendered and produced before the court was document number 8, namely; copy of the part development plan. Instructively, the said document was produced as exhibit P4 by PW2 [Cheruiyot Matthew Kimutai].
79. What becomes apparent is to the effect that even though the Plaintiff had filed a plethora of documents in an endeavour to demonstrate entitlement to the suit property, various documents were not



produced and or admitted before the court. In this regard, it means that the documents which were marked for identification cannot be deployed and or utilized by the Plaintiff in an endeavour to demonstrate entitlement to the suit property.

80. For good measure, there is no gainsaying that documents marked for identification do not form part of the exhibits. In this regard, same [Documents] cannot be referenced and or relied upon by the Plaintiff; or the Court in an endeavour to determine the dispute beforehand.
81. In the case of *Kenneth Nyaga Mwige vs Austin Kiguta & 2 others* (2015) eKLR, the Court of Appeal addressed the question of admissibility of documents; and expounded on the legal implications of documents marked for identification.
82. For coherence the court stated as hereunder;
 18. The mere marking of a document for identification does not dispense with the formal proof thereof. How does a document become part of the evidence for the case? Any document filed and/or marked for identification by either party, passes through three stages before it is held proved or disproved. First, when the document is filed, the document though on file does not become part of the judicial record. Second, when the documents are tendered or produced in evidence as an exhibit by either party and the court admits the documents in evidence, it becomes part of the judicial record of the case and constitutes evidence; mere admission of a document in evidence does not amount to its proof; admission of a document in evidence as an exhibit should not be confused with proof of the document. Third, the document becomes proved, not proved or disproved when the court applies its judicial mind to determine the relevance and veracity of the contents – this is at the final hearing of the case. When the court is called upon to examine the admissibility of a document, it concentrates only on the document. When called upon to form a judicial opinion whether a document has been proved or disproved or not proved, the Court would look not at the document alone but it would take into consideration all facts and evidence on record.
 19. The marking of a document is only for purposes of identification and is not proof of the contents of the document. The reason for marking is that while reading the record, the parties and the court should be able to identify and know which was the document before the witness. The marking of a document for identification has no relation to its proof; a document is not proved merely because it has been marked for identification.
 20. Once a document has been marked for identification, it must be proved. A witness must produce the document and tender it in evidence as an exhibit and lay foundation for its authenticity and relevance to the facts of the case. Once this foundation is laid, the witness must move the court to have the document produced as an exhibit and be part of the court record. If the document is not marked as an exhibit, it is not part of the record. If admitted into evidence and not formally produced and proved, the document would only be hearsay, untested and an unauthenticated account.
 21. In *Des Raj Sharma -v- Reginam* (1953) 19 EACA 310, it was held that there is a distinction between exhibits and articles marked for identification, and that the term “exhibit” should be confined to articles which have been formally proved and admitted in evidence. In the Nigerian case of *Michael Hausa -v- The State* (1994) 7-8 SCNJ 144, it was held that if a document is not admitted in evidence but is marked for identification only, then it is not part of the evidence that is properly before the trial judge and the judge cannot use the document as evidence.



22. Guided by the decisions cited above, a document marked for identification only becomes part of the evidence on record when formally produced as an exhibit by a witness. In not objecting to the marking of a document for identification, a party cannot be said to be accepting admissibility and proof of the contents of the document. Admissibility and proof of a document are to be determined at the time of production of the document as an exhibit and not at the point of marking it for identification. Until a document marked for identification is formally produced, it is of very little, if any, evidential value.
83. Similarly, the Court of Appeal re-visited the foregoing position in the case of *Finmax Community Based Group & 3 others v Kericho Technical Institute* [2021] KECA 962 (KLR), where the court stated thus;
- As way back in 1953, in the case of *Des Raj Sharma vs. Reginam* (1953) 19 EACA 310, it was recognized that the only distinction between “exhibit” and an article or a document “marked for identification” is that an “exhibit” is evidence which has been formally proved and admitted in evidence, while an exhibit “marked for identification” (MFI) is not part of the evidence before the court and cannot, therefore, be used as proof of any fact.
- Until a document “marked for identification” is formally produced, it is of very little, if any, evidential value. See *Kenneth Nyaga Mwige vs. Austin Kiguta & 2 others* [2015] eKLR.
84. Bearing in mind the holding in the foregoing decisions, it is common ground that the Plaintiff cannot rely upon the documents which were marked for identification to demonstrate its ownership of the suit property.
85. Having disposed of the foregoing issue, it is now appropriate to discern whether the Plaintiff placed before the court credible evidence to demonstrate ownership of the suit plot. To start with, it is important to underscore that what constitutes the suit plot was hitherto part of trust land, which was being administered and managed by the designated local authorities.
86. In this case the suit property fell within the mandate, auspices and or jurisdiction of the County Council of Isiolo [now defunct].
87. To the extent that the suit properties fell within the jurisdiction and mandate of the county council of Isiolo, [now defunct] it was then incumbent upon the Plaintiff or such other person seeking to be allocated land to apply to the County Council of Isiolo. Furthermore, it is important to highlight that upon receipt of the application letter, the County Council of isiolo would be called upon to consider same and thereafter to make appropriate recommendations. Instructively, it was within the mandate of the County Council to approve or not to approve.
88. In the event, that the County Council of isiolo approved the application for the plot then same would prepare the minutes and forward same together with a letter of no objection to the commissioner of lands [now defunct] for purposes of issuance of a letter of allotment.
89. In the premises, it was incumbent upon the Plaintiff herein to place before the court evidence of an application letter seeking for allotment of land; evidence of the minutes of the county council approving the application; evidence of the requisite part development plan; evidence of the letter of allotment; and no doubt evidence of a certificate of title, if any.
90. Be that as it may, it is evident that the Plaintiff herein did not place before the court any of the foregoing documents. For good measure, the only document that was tendered was a part development plan,



which was neither signed by the director of physical planning nor approved by the commissioner of lands.

91. Pertinently, PW 2 confirmed and acknowledged that a part development plan [PDP] must be approved by various departments, including the director of physical planning and the commissioner of lands. However, the witness conceded that the part development plan produced by him was neither signed nor approved. Furthermore, the witness thereafter admitted and acknowledged that the document in question were invalid.
92. On the other hand, PW 1, while under cross-examination, conceded that the plaintiff herein had neither been issued with a letter of allotment or any certificate of title in respect of the suit properties.
93. Bearing in mind the totality of the evidence on record, there is no gainsaying that the Plaintiff herein did not acquire and or accrue any title document to and in respect of the suit properties. In this regard, I encounter no difficulty in finding and holding that the Plaintiff did not prove its case to the requisite standard or at all.
94. Before concluding on this matter, it is instructive to reference the decision in the case of *Wreck Motors Enterprises Ltd vs the Commissioner of Lands and others (1997)* eKLR where the Court of Appeal stated and held thus;

Title to landed property normally comes into existence after issuance of a letter of allotment, meeting the conditions stated in such a letter and actual issuance thereafter of title document pursuant to provisions held. See *Dr. Joseph N.K. Arap Ng'ok v Justice Moijo ole Keiwua & 4 Others*, Civil Application No. NAI.60 of 1997 (unreported).

95. Regarding the second issue, it is imperative to observe and state that the 1st defendant also made a claim to and in respect of the suit property. Suffice it to posit that the 1st defendant testified and produced before the court a copy of the application letter seeking to be allocated the suit plot. Furthermore, the 1st defendant also tendered and produced before the court the minutes of the county council of Isiolo confirming that his application for allotment of land was duly considered and approved.
96. Additionally, the 2nd and 4th Defendant[s] tendered and produced a copy of the minutes of the council dated 20th June 1997 and wherein the application by the 1st defendant was considered and approved.
97. Based on the evidence that was tendered by the 1st defendant and which was corroborated by the 2nd and 4th defendants, there is no gainsaying that the 1st defendant has duly established and proved his claim as pertains to entitlement to the suit property. [See the decision in *Dr. Samson Gwer and Others versus KEMRI [2020]* eKLR, where the Supreme Court highlighted the incidence of burden and standard of proof].
98. As pertains to the third issue, it is instructive to observe that the Plaintiff herein had sought for a plethora of reliefs including a declaration that same [Plaintiff] is the lawful owner of the suit property.
99. However, while discussing issue number one [1], the court has found and held that the Plaintiff did not adduce before the court any evidence to demonstrate its ownership of the Suit property. In this regard, it is common ground that an order of declaration of ownership cannot issue in favour of the Plaintiffs.
100. Regarding the prayer for permanent injunction, it is worthy to underscore that an order of injunction can only issue to protect or preserve the ownership rights of a person who has accrued and or acquired rights to the property. [See section 7 of the *Land Act, 2012*]. However, such an order cannot issue where the rights sought to be protected are illusory or imaginary [see *Nelson Kazungu Chai & 9 others vs Pwani University College (2017)* eKLR at Paragraph 22 thereof.



101. Other than the Plaintiff, the defendants sought a declaration of ownership and an order of permanent injunction. While dealing with issue number two [2] the court has found and held that the 1st defendant tendered and produced evidence that was corroborated by the 2nd and 4th defendants. To this end, there is no gainsaying that the 1st defendant has established a basis to warrant the grant of an order of permanent injunction. [see Moya Drift Farm Ltd vs Theuri (1973) E.A 173; Waas Enterprises Ltd vs Nairobi City council 2014 eKLR and Mohanson [K] Ltd vs the Registrar of Titles (2017) eKLR.
102. In a nutshell, I am persuaded that the 1st defendant is entitled to an order of permanent injunction.

Final Disposition

103. Having appraised and considered the thematic issues highlighted in the body of the Judgment, it must have become crystal clear that the Plaintiff's suit is devoid and bereft of merits. To this end, the Plaintiffs' suit courts dismissal.
104. On the contrary, the 1st defendant has tendered and placed before the court credible evidence to demonstrate entitlement to and in respect of the suit property. Simply put, the counterclaim is meritorious.
105. Consequently, and in the premises, the final orders that commend themselves to the court are as hereunder;
- i. The Plaintiff's suit be and is hereby dismissed.
 - ii. The Counterclaim by the 1st defendant be and is hereby allowed.
 - iii. An order of permanent injunction be and is hereby issued restraining the plaintiff either by its members, agents, servants and or anyone acting under its instructions from interfering with the defendant's rights to and in respect of the suit property.
 - iv. Costs of the suit and the counterclaim be and are hereby awarded to the 1st, 2nd and 4th defendants.
 - v. The Costs in terms of [iv] above shall be a greed upon and in default be taxed in the conventional manner.
106. It is so ordered.

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

OGUTTU MBOYA, FCI Arb, CPM [MTI].

JUDGE.

In the presence of:

Mutuma/Mukami – Court Assistant.

Miss Mbogo for the 1st Defendant

Mr. Ken Muriuki for the 2nd & 4th Defendants

No appearance for the Plaintiff.

No appearance for the 3rd & 5th Defendants

