



**Omaiyo v Kotut & 2 others (Environment and Land Appeal 16 of 2024)
[2025] KEELC 4266 (KLR) (Environment and Land) (5 June 2025) (Judgment)**

Neutral citation: [2025] KEELC 4266 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIVASHA
ENVIRONMENT AND LAND
ENVIRONMENT AND LAND APPEAL 16 OF 2024**

**MC OUNDO, J
JUNE 5, 2025**

BETWEEN

PETER ONIMI OMAIYO APPELLANT

AND

BELINDA CHEMOSOP KOTUT 1ST RESPONDENT

**THE DISTRICT LAND ADJUDICATION AND SETTLEMENT OFFICER
NAIVASHA SUB-COUNTY 2ND RESPONDENT**

THE HONOURABLE ATTORNEY 3RD RESPONDENT

(Being an Appeal against the Judgement of the Environment and Land Court at Naivasha (Y.M Barasa SRM) delivered on 27th April, 2022 in ELC Case No. 55 of 2018)

JUDGMENT

1. Before me for determination on Appeal is a matter which was heard and determined by Hon. Y.M Barasa, Senior Resident Magistrate wherein upon considering the evidence of both parties, vide his Judgment dated 27th April 2022, the learned Magistrate entered judgment in favor of the 1st Defendant’s counterclaim and dismissed Plaintiff’s suit thereby issuing an order of permanent injunction restraining the Plaintiff from dealing in any way with plot No. 682 Ol Jorai Phase II Settlement Scheme.
2. The Plaintiff/Appellant, being dissatisfied with the Judgement and Decree of the trial Magistrate has now filed the present Appeal based on the following grounds in his Memorandum of Appeal:
 - i. That the Learned Magistrate erred in law and in fact in disregarding the Appellant’s evidence thus arriving at a wrong judgement.



- ii. That the learned Trial Magistrate erred in law and fact in issuing a permanent injunction restraining the Appellant, his agents, servants, employees or anyone claiming under him from trespassing, entering into, remaining upon or in any way dealing with the subject parcel of land.
 - iii. That the Learned Trial Magistrate erred in fact and in law in failing to appreciate the equitable doctrine of the first in time prevail by reaching a decision that the Allotment Letter issued to the 1st Respondent should stand as opposed to the initial Allotment letter issued to the Appellant.
 - iv. That the Learned Trial Magistrate erred in fact and in law in finding authenticity in the Allotment Letter issued to the 1st Respondent despite the absence of a notice of revocation of the previous title issued to the Appellant.
 - v. That the Learned trial Magistrate erred in fact and in law in failing to appreciate the evidence before the Court on proof of ownership.
 - vi. That the Learned trial Magistrate erred in fact and in law by disregarding the Appellant's testimonies and documentary evidence before court on ownership and use of the subject land.
 - vii. That the Learned trial Magistrate erred in fact and in law in totally disregarding exhibits produced by the Appellant and more particularly the Letter of Allotment dated 24th October 1988.
 - viii. That the Learned Trial Magistrate erred in fact and law in dismissing the Appellant's claim and allowing the 1st Respondent's counterclaim to succeed.
 - ix. That the Learned trial Magistrate erred in fact and in law in failing to consider the submissions by the Appellant.
 - x. Such other, further, additional and/or incidental grounds as may emerge or be canvassed at the hearing of the present Appeal.
3. The Appellant thus sought for the following orders:
- i. The Appeal be hereby allowed;
 - ii. The judgement of the Honourable Court issued and delivered on the 27th April 2022 be set aside;
 - iii. The costs of the Appeal be borne by the Respondents;
 - iv. Such other, further, incidental, alternative and/or consequential orders or reliefs as the Honourable Court may deem just and expedient.
4. The Respondents did not file any response.
5. The Appeal was admitted on 27th September, 2024 and directions issued for the same to be disposed of by way of written submissions wherein only the Appellant complied and filed his submissions dated 14th October, 2024 which I shall summarize as herein under:
6. The Appellant summarized the factual background of the matter before framing two (2) issues for determination as follows:
- i. Whether the Appellant acquired the property legally.
 - ii. Whether the Appellant is entitled to the prayers sought.



7. On the first issue for determination as to whether the Appellant had acquired the suit property legally, he submitted that vide an allotment letter dated the on 24th October 1988 he was allotted land parcel No. 359, by the Provincial Commissioner (PC), which land subsequently changed to land parcel No. 682. That the 1st Respondent on the other hand alleged to have been offered the land on 16th August 2010. That despite his allotment having been the first in time, the learned trial Magistrate had proceeded to counter the letter by stating that the Plot Number in the said letter had been handwritten. Reliance was placed on the decision in *Gitway Investment Ltd v Tajmal Ltd & 2 Others*, Nairobi HCC No. 1114 of 2002 where the court had cited the Court of Appeal's case in *Wreck Motors Enterprises v Commissioner of Land C.A No. 71/1997* to submit that his allotment, being first in time, superseded the 1st Respondent's offer that was close to 22 years after he had been allotted land.
8. That no evidence had been produced to show that the Appellant's Allotment letter had been issued illegally or had been lawfully and validly cancelled or that the same had been re-allocated to the 1st Respondent. That further, no witness had come forward either from the 1st or 2nd Respondents to prove the existence of an illegality, fraud or cancellation of the Appellant's allotment. That subsequently, it was evident that once the Appellant had been allotted the land, the same could not be reallocated to another person. He placed reliance on the decided case in *Ali Gadaffi & another v Francis Muhia Mutungu & 2 others* [2017] eKLR to submit that his allotment letter having been the first in time, he was the lawful owner of the suit property.
9. Reliance was also placed on the decisions in the case of *Samuel Mbugua Gachuhi v City Council of Nairobi & 2 others* [2008] eKLR and *Magaiwa Chacha Makorere v Marwa Gitugu Mwita* [2010] eKLR to submit that having taken possession of and having commenced construction on the land, it had not been open for the 2nd Respondent to allot it to other individuals since equity deemed as done that which ought to be done. That subsequently, any subsequent allotment stood as null and void.
10. On the second issue for determination as to whether the Appellant was entitled to the prayers sought, he placed reliance in the decided case of *Munyu Maina v Hiram Gathiba Maina, Civil Appeal No. 239 of 2009* to submit that where a title was challenged, one ought to prove its legality and and that it was not enough to dangle the title in the face of the court. It was thus his submission that the 1st Respondent had irregularly, illegally and/or fraudulently acquired the allotment in connivance with the 2nd Respondent where they had sought to defeat the Appellant's Constitutional right to property. That in any case, the allotment letter that had been produced by the Appellant had been first in time thus any subsequent allotment was legally null and void.
11. He submitted that he had become the indefeasible proprietor of the suit land after the allotment and that he had challenged the 1st Respondent's case and counterclaim on grounds of fraudulent title/allotment of the land. He placed reliance in the Court of Appeal's decision in the case of *Dr. Joseph Arap Ngok v Justice Moijo Ole Keiwua & 5 Others*. He urged the court to analyze the evidence and point out the said fraud and illegality for what it truly was since the Appellant had opted to seek the protection of the law.
12. That the law was explicit to the effect that any title that had been founded on irregularity, un-procedural or corrupt scheme, stood vitiated. That subsequently, the allotment and all documentation thereafter that had purportedly been acquired by the 1st Respondent having been demonstrably shown to have been tainted with fraud, deceit and nullity fitted the description of a title that had been acquired not only irregularly and un-procedurally, but also through a corrupt scheme. That subsequently, it was only proper that the 1st Respondent's counterclaim be dismissed and the Appellant be granted orders as prayed herein.



13. That from the foregoing, the court could not turn a blind eye to sanitize irregularly and fraudulently acquired properties. That it was the court's obligation to step in and stop the fraud in its track. That despite being informed that the land was not hers, the 1st Respondent through her actions, had caused the Appellant untold suffering where he faced the risk of being evicted unless the court stepped in. Reliance was placed in the decided case of Kenya National Highway Authority v Shalien Masood Mughal & 5 Others [2017] eKLR where Justice Maraga (as he then was) had held that courts should nullify titles by land grabbers who waved a title of the land grabbed and loudly pleaded the principle of indefeasibility of title deed. Further reliance was placed in the decided case of Alberta Mae Gacci v Attorney General & 4 Others [2006] eKLR to submit that existence of a null and void allotment letter did not in itself limit the powers of the court.
14. In conclusion, the Appellant submitted that no court should sanction and pass as valid any title to property founded on fraud, deceitfulness, illegality, nullity, irregularity, un-procedural or otherwise a product of a corrupt scheme. That indeed, the Appellant had proved that his allotment had been first in time, which allotment was never challenged, cancelled or reassigned hence he was the lawful owner of the suit parcel.
15. That it was thus consonant with legal and equitable justice that the Honourable Court finds the instant Appeal meritorious, sets aside the trial court's finding and grants the orders sought by the Appellant in his Complaint.

Summary of evidence tendered before the trial court;

16. I have considered the record of Appeal, the holding by the trial Magistrate, the written submissions by learned Counsel and the applicable law. Conscious of my duty as the first Appellate Court in this matter, I have to reconsider the decision Appealed against, assess it and make my own conclusions as was stated by the Court of Appeal in Paramount Bank Limited v First National Bank Limited & 2 Others (Civil Appeal 468 of 2018) [2023] KECA 1424 (KLR) where the court held as follows;

“A first appeal is a valuable right of the parties and unless restricted by law, the whole case is therein open for rehearing both on questions of fact and law. A first Appellate Court is the final court of fact ordinarily and therefore a litigant is entitled to a full, fair, and independent consideration of the evidence at the appellate stage. Anything less is unjust. The first appeal has to be decided on facts as well as on law. While considering the scope of section 78 of the Civil Procedure Act, a first Appellate Court can appreciate the entire evidence and come to a different conclusion.”

17. According to the proceedings, the Appellant herein instituted the suit against the Respondents in CMCELC No. 55 of 2018 vide a Complaint dated 1st August 2018 wherein he had sought for the following orders;
 - i. Declaration that the Plaintiff is the legitimate owner of Plot Number 359, (New Number 683) Ol Jorai Settlement Scheme, measuring approximately 5 acres, which was lawfully allocated and/or alienated in favour of the Plaintiff vide a Letter dated 24th October 1988.
 - ii. An order of Eviction against the 1st Defendant, her agents and/or servants from Plot Number 359, (New Number 682) Ol Jorai Settlement Scheme.
 - iii. A permanent injunction restraining the 1st Defendant either by herself, agent, servants and/or anyone claiming under the said Defendant from entering upon, re-entering, taking possession,



trespassing onto, cultivating, building structures, interfering with and/or in any other manner dealing with Plot Number 359, (New Number 682) Ol Jorai Settlement Scheme and/or any portion(s) thereof.

- iv. In the alternative and without prejudice to the foregoing, an order and/or Declaration that the allocation and/or alienation, if any, of the land belonging to the Plaintiff in favour of the 1st Defendant, was/is unlawful and/or fraudulent and hence the same did not confer any title and/or interest in favour of the said 1st Defendant, or at all.
 - v. General Damages for Trespass.
 - vi. Costs of the suit be borne by the Defendants.
 - vii. Such further and/or other relief as the Honourable Court may deem fit and expedient so to grant.
18. Subsequent to the filing of the suit, the 1st Defendant had filed her Statement of Defence and Counterclaim dated 17th September 2019 and Amended on 16th April, 2021 wherein she had denied the allegations contained in the Plaint putting the Plaintiff to strict proof while stating that she was legally and rightfully allocated Plot No. 682 at Ol Jorai Phase II Settlement Scheme in the year 2010 by the Ministry of Lands through the Director of Land Adjudication and Settlement after which she had legally occupied the same and put up a structure. That subsequently, the Plaintiff was non-suited and could not be granted the prayers or the remedies sought whether temporarily or permanently.
19. In her Counterclaim, the 1st Defendant reiterated the contents of her defence stating that the Plaintiff was not the legal owner and/or registered proprietor of the suit property as had been alleged. That the Plaintiff's claim was unlawful and fraudulent. She particularized illegality, trespass and fraud on the part of the Plaintiff as follows:
- i. Procuring or attempting to procure registration and/or claiming registration and/or allocation of the land on which the 1st Defendant was rightfully and legally allocated by the Government.
 - ii. Claiming that the 1st Defendant's parcel of land known as Plot No. 682 Ol Jorai Phase II Settlement Scheme was his property and fraudulently misdescribing it as a new number of the alleged Plot No. 359 Ol Jorai Settlement Scheme.
 - iii. Trespassing on the 1st Defendant's rightful property legally allocated to her thus causing the 1st Defendant distress and preventing her from enjoying quiet possession.
20. The 1st Defendant's counter claim against the Plaintiff was for an order that the title issued and/or to be issued, should be to her as the rightful owner. That further, the Plaintiff should be ordered to desist from laying claim over her portion of land which she was already occupying, had developed and continued to live therein to date.
21. The 1st Defendant thus sought for the dismissal of the Plaintiff's suit with costs and for judgement to be entered in her favour for:
- i. An order of permanent injunction to restrain the Plaintiff, his agents, servants, employees and/or anyone claiming under or in trust for the Plaintiff and/or acting in his capacity from trespassing, entering into, remaining upon, accumulating building or other materials, cultivating, grazing, fencing and/or in other manner interfering or dealing with the suit property in any manner whatsoever.



- ii. The costs of the suit and the costs of the counterclaim be borne by the Plaintiff and other relief as the court will deem fit and just to grant.
22. In a rejoinder, the Plaintiff vide his response to the 1st Defendant's Amended Statement of Defence and Counterclaim dated 8th May, 2021 reiterated the contents of his Plaint while denying the contents of the Amended Statement of Defence in its entirety. He maintained that he had been lawfully allocated the parcel or portion of the land in question known as Plot Number 359, New Number 682 Ol Jorai Settlement Scheme.
 23. In response to the 1st Defendant's counterclaim, he reiterated the contents of his Plaint putting her to strict proof thereof. He thus sought that the 1st Defendant's Amended Statement of Defence and Counter-Claim be struck out and/or dismissed with costs and judgement be entered in favour of the terms in his Plaint dated 1st August 2018 and filed in court on 28th August 2018.
 24. The case proceeded for hearing wherein Peter Onimi Omaiyo, the Plaintiff herein testified as PW1 to the effect that the subject matter of the suit registration No. 359 was situated at Oljorai Settlement Scheme. That he been allotted the land by the Provincial Commissioner wherein in the year 1989 they had been summoned and shown the said land whose number later changed to No. 682. He produced a copy of the allocation letter dated 24th October 1988 as Pf exh 1.
 25. That upon allotment, he had taken took possession and occupation of the land wherein he had proceeded to utilize the same for about 30 years without objection from anybody. That in the year 2010 however, he had been summoned and asked for particulars of the land wherein he had given out his letter of allotment. He explained that earlier on in the year 2007 there had been experienced the post-election violence in which many properties had been destroyed within Ol Jorai Scheme. That later in the year 2010 they had been contacted and asked to return to their respective plots so that their particulars could be taken for purposes of issuance of title.
 26. That although he had given out his allotment letter and Identity Card to the surveyor, his name was not on the list. That subsequently he had written a complaint letter dated 21st March 2014 to the office administrator, which letter he had produced as Pf exh 2. That no action had been taken despite him reporting to the District Officer and District Commissioner's offices. That accordingly, he had written another complaint letter dated 13th July 2016 wherein after, he had sought legal advice from his Advocate who had in turn written a demand letter dated 22nd October 2014.
 27. That in the year 2016, the 1st Defendant entered into the land and built a house wherein a bid to settle the dispute bore no fruit. His evidence was that the 1st Defendant did not acquire the land legally but had forcefully taken it and therefore her counter claim ought to be dismissed. He then adopted his witness statement dated 1st August 2018 as his evidence in chief and produced the following Documents as his exhibits.
 - i. His copy of Identity Card No. 0479450.
 - ii. Copy of the Letter of Allotment dated 24th October 1988.
 - iii. Copy of the Letter dated 21st March 2014 addressed to the Director Land Adjudication & Settlement Officer, Nairobi.
 - iv. Copy of Letter by M/s J.K Ayusa & Company Advocates addressed to the District Land Adjudication & Settlement Officer, Nairobi.



- v. Copy of the letter dated 13th July 2016 addressed to the Director Land Adjudication & Settlement Officer, Nairobi.
 - vi. Copy of the District Officer, Elementaita Division, dated 30th August 2016.
 - vii. Copy of the Minutes and/or Proceedings of the Land/Arbitration Case between the Plaintiff and the 1st Defendant held on the 2nd September 2016.
 - viii. Copy of the Minutes of the Meeting held by the Chief, Ol Jorai Location on 2nd September 2016.
 - ix. Copy of a Letter of the Assistant Chief, Kongasis Sub-Location, dated 10th January 2017.
 - x. Copy of Crop Assessment Report by the Agricultural Extension Officer, Gilgil Ward, dated 22nd July 2016.
 - xi. The Pleadings, Affidavits and all other Documents filed in respect of the instant suit.
28. In cross examination, he confirmed that whereas he was the owner of land No. 359 Ol Jorai and had the allocation number, he did not have either the map or the survey report. He admitted that although he had been taken to the land by the surveyor in the year 1989, he had not recorded the said surveyor's statement. He confirmed that in his letter of allocation, the plot number had not been typed but handwritten by a surveyor whose name he did not know and who did not counter sign either. That the said allotment letter also had no stamp and name.
 29. He maintained that he had been informed of the change of number from plot No. 359 to No. 689 by a settlement officer although there had been no letter to that effect and neither did he have a map to show that land parcel No. 359 was still No. 682.
 30. His evidence was that whereas he took occupation of the land in the year 1989 he had been evicted by the Defendant wherein his house burned down in the year 2008. That he neither had a photograph of the said house, nor did he report the incident to the police which evidence was also not indicated in his statement.
 31. When he was referred to Pf exh 5, a copy of minutes, he confirmed that whereas Wesley and Salome had been in attendance, he had no quarrel with them because they had not been the ones who had taken his land. That he did not know why the surveyor had left his name out and that he never quarreled with the Directors of Land Adjudication or tried to grab the land.
 32. That whereas he had been living in Nakuru town, he had employed one Moses Kamala as the caretaker on the land, whom he had not called as his witness. He confirmed that he had not been in occupation of the land in the year 2009. That nonetheless, there was a time that he had kept livestock and planted the trees therein which trees had been uprooted, a matter he had reported to the Chief.
 33. When he was referred to DMF 1, a Letter dated 16th August 2010, he denied having received it. He also confirmed having no receipt of payment in respect of the letter. He was then referred to DMFI 2, a Receipt to which he responded that he was not aware of a case that they had filed on 30th August 2018.
 34. I reference to DMFI 3, the Minutes of 30th August 2018, he confirmed that whereas he knew Salome, Wesley and Richard, the verdict of the said minutes was false. He maintained that he had not intended to grab the land.



35. He confirmed that the 1st Defendant had built on the land and had been cultivating therein but that it had not been true that the last time that he had been in occupation of the same had been in the year 2018.
36. When he was re-examined, he confirmed that the surveyor had taken him to the land in the year 1989. That the letter that had been addressed to him, had been signed by the Provincial Commissioner (PC) wherein his identity number had been indicated. He confirmed that in year 2008 he was in Nakuru and could not travel to Ol Jorai to report because of the chaos. He confirmed that he had been cultivating the land in the year 2009 and that he had employed a caretaker called Moses Kamala.
37. He further confirmed that he had been the first to be issued with the allotment letter. That he was not aware of the meeting that had been held in the year 2018, that the 1st Defendant was on the land which he had lastly utilized in the year 2018.
38. PW2, Elizabeth Njeri Kariuki, testified that they had entered their land in the year 1988 after which they had been issued with allotment letters. That they had been given ballots then shown the plots wherein she had been shown plot No. 371 Ol Jorai. That the Plaintiff was also shown his plot in the year 1989 wherein they had both started utilizing the same before they were chased away during the clashes. That the land had remained vacant. That she was aware that the Plaintiff's house had been burnt down.
39. That in the year 2010, the people, including the Plaintiff, who had allotment letters had been summoned by the Chief wherein their names had been recorded. That after two weeks both she and the Plaintiff's names were missing in wherein someone's name had been reordered on her plot and although she had later got her plot back, the Plaintiff was unfortunate, although he had continued cultivating on his initial plot. That she had later learnt that the Plaintiff's land had been given to somebody else. That nevertheless, he was the one who used to look after the Plaintiff's land.
40. Her evidence was that the 1st Defendant did not acquire the land legally hence her counterclaim should be dismissed. She urged the court to assist the Plaintiff. She then adopted her witness statement as her evidence in chief.
41. In cross-examination, she confirmed that she had gone to school in Limuru. That whereas she had affixed her thumbprint on her identity card, yet her witness statement had been signed.
42. That although she had relocated because of the clashes, she knew the people who lived where the suit land is located and that she had known the Plaintiff for more than 30 years. She also confirmed that although she did not have documents to her land in court, yet she too had been issued with an allotment letter. That despite the Plaintiff having employed a caretaker, she also used to look after his land.
43. In re-examination, she confirmed that she had been issued with allocation letter and that the Plaintiff had employed a caretaker called Moses. That she had known the Plaintiff since the year 1989

The Plaintiff had thus closed his case.

44. The defence case had kicked off with the testimony of Belinda Chemosop Kotut, the 1st Defendant herein who testified that she had lived in Ol Jorai since the year 2002. That in the year 2009, her sister had informed her that the Government was giving land to all squatters who were required to submit their names. That subsequently, she had made an application to the lands office in the year 2009. That in the year 2010, her sister had informed her to confirm if she had been shortlisted.
45. That together with her husband, Felemon Chebon, she had confirmed that she had been allocated a parcel of land. That after two weeks they had attended a meeting at Kongasis Primary School at OL



Jorai Phase II as advised, which meeting that had been presided over by the District Officer who had asked people who had been allocated parcels of land to collect their allotment letters.

46. That she had been allocated plot No. 682 measuring 2 hectares, an equivalent of 5 acres vide an allotment letter dated 16th August 2010. That they had been advised to go to the District Commissioner's office and the lands office to be given a surveyor who would show them boundaries. That she had complied and had been shown the land which had bushes and had never been cultivated. That they had fenced the land and permitted her sister to graze her animals therein. That thereafter, she had built a semi-permanent house on the land.
47. Her evidence was that she had paid the Kshs. 12,600/= and a penalty fee for late payment totaling Kshs. 13,870/= in the year 2012. That she had continue cultivating therein up to the year 2014 when she had been informed by one, Macharia that someone was claiming ownership of her parcel of land No. 682. Later the said Macharia confirmed that the land was hers.
48. That in the year 2015 when she had gone to pick her title deed, she had been informed that the Plaintiff had written a letter claiming ownership of the land. That in the year 2016 they had a meeting with the chief, one Mark Cherotich on the parcel of land where she had come to know the Plaintiff. She confirmed that Salome, Wesley, Samuel and Chelel had also been present in the said meeting in which everyone was allowed to speak.
49. That at the meeting, the Plaintiff's wife had told her to remove her 'garbage' from their land so that they could take possession and occupation. That they had later been summoned by the District Commissioner for a meeting on 30th August, 2018 which meeting she had attended in the company of her husband, a neighbor called Chepkirui and the land committee. That the Plaintiff and his wife had also been in attendance. The meeting had been chaired by the District Commissioner wherein her allotment letter was verified and the meeting ended.
50. That after one month they had returned to the District Commissioner wherein she had been served with court documents containing her name. Since the matter was now in court, the District Commissioner declined to hear the dispute.
51. That she had fenced the land, planted trees and grass, settled there and had cattle therein wherein she had been utilizing the land to date. That she had neither taken the Plaintiff's land nor knew plot No. 359. She sought for the Plaintiffs suit to be dismissed and an injunction order be issued against the Plaintiff not to enter into her land. She also prayed for costs before adopting her witness statement as her evidence in chief.
52. The 1st Defendant relied on the following documents as her exhibits.
 - i. 1st Defendant's Identification Card.
 - ii. Letter of offer dated 16th August 2018.
 - iii. Receipt of payment.
 - iv. Minutes from the chief dated 30th August 2018.
 - v. Photographs of plot No. 682 OI Jorai Phase II Settlement Scheme.
53. In cross-examination, she confirmed that she had been a resident of OI Jorai since the year 2002 and had been leasing land therein. She confirmed that OI Jorai had been affected by the post-election violence wherein people had been displaced. That she was among the squatters who had applied for allocation



- of land wherein she had presented her Identity card and written a letter, which she did not produce in court.
54. She acknowledged that whereas she had been among the people who had been shortlisted, she had not produced the said list in court. She went on to confirm that a surveyor had showed her the land in the year 2010 which land had been virgin. That she had made developments on the said land although she had not produced the photographs in court. That at the chief's meeting, the Plaintiff had complained that he was the owner of the land. She confirmed that Samuel Chebor was her neighbor.
 55. She confirmed that in the second meeting with the District Commissioner, the agenda had been proof of ownership of land wherein the Plaintiff had also produced his documents. She also confirmed that she had been issued with the allotment letter on 16th August 2010 by the land adjudication officer wherein she had been allocated the parcel of land No. 682 measuring 5 acres and that the said allotment letter did not have a seal.
 56. That she neither uprooted the Plaintiff's crops nor demolished his house. That it was in the year 2015 that she had discovered that the land had been given to the Plaintiff.
 57. In re-examination, she testified that she did not know the number of people who had applied for the land since many people had been given land. She explained that a list of names had been hang on the wall and that she had not been given a copy. That further, she had not been told that the allotment letter must have a seal.
 58. Wesley Kipruto Kibet testified as DW2 to the effect that he had started living in Kongasis, Ol Jorai Phase II in the year 1988 and that he was a village elder from the year 2009. That wherein they had been living there temporarily, some people had been given land by ADC, some by the Provincial Commissioner while others by 'Chargon'.
 59. That in the year 2009, they had gone from house to house in the company of the Settlement Officer and the District Officer to register people since some had no letters. That there had been 5 committees wherein he had been the chairman. That he knew where the suit property was located since they had visited the land.
 60. That although the land had been vacant, after the Plaintiff lay claim of ownerships, they had asked him to provide evidence because he had never seen him. That despite the claim by the Plaintiff that there was a house on the land, that had not been the case. That they had found him standing on the land wherein he had wanted to be registered as the owner of the same.
 61. That the land had never been cultivated and that it together with some 360 pieces of land had been vacant. That whilst he did not know the 1st Defendant at first, they had been told to apply as squatters wherein he and the 1st Defendant had been shortlisted and that was when he had met the 1st Defendant at the Chief's office. That the 1st Defendant had gone to the District Officer, he had ordered for the case be conducted on site/the land. That he and the committee members together with the Plaintiff and the 1st Defendant had been present in the said meeting.
 62. That the 1st Defendant had fenced and planted trees on the land. That upon the Plaintiff's wife demanding that the 'garbage' on the land be removed, the case had been referred to the District Commissioner from wherein they had been served with the court documents upon which the District Commissioner declined to hear the case. He confirmed that the 1st Defendant was in occupation and possession of the land. He then adopted his witness statement as his evidence in chief.
 63. In cross-examination, he confirmed that he had lived at Ol Jorai since the year 1989 and that he was one of the beneficiaries of the Ol Jorai settlement scheme. That his parents had also been residents of



- Ol Jorai as they had been given land by the District Commissioner. He also confirmed that his parent's parcel of land was No. 733 which had been allocated to them by the Provincial Commissioner.
64. That the ADC had also been allocated land. That there had however been persons who had not been issued with allotment letters. That whereas they had a meeting with the District Commissioner wherein it had been agreed that all the allotments be revoked so that they could visit house to house and access the land to be given to the villagers, he had not produced the minutes of the said meeting.
 65. That a notice to revoke the allotment had been issued wherein a fresh survey had been done in the year 2009. He confirmed that Ol Jorai had been affected by the post-election violence in the year 2008 wherein people had been chased away but had later gone back to their lands.
 66. He confirmed that he had known the 1st Defendant around the year 2010 and that she had applied for the land. He confirmed that he too had applied afresh wherein he had been allocated plot No. 132.
 67. He maintained that a fresh survey had been done for all the land wherein his parcel of land had changed from No. 733 to 132 although the physical ground did not change. That he had known the Plaintiff from when they had visited the site/ground and while he was the chairman.
 68. He confirmed that PW2 was his neighbor, that the agenda of the meeting of 30th August 2018 that had been presided over by the chief on the suit land had been to find out what the status was on the ground/land.
 69. In re-examination he testified that post-election violence had affected the whole country. He confirmed that Ol Jorai was cosmopolitan and that the displaced people like PW2 had later returned.
 70. DW3, one Salome Nyanchoka Onduso, testified that she had she had lived in Ol Jorai Phase II since the year 1994 where her husband had land. That in the year 2008, they had been called for a meeting by the District Commissioner. That there had been letters from different farms such as ADC hence a committee had been formed to locate the land and their owners for which vacant land was to be registered.
 71. That the committee had comprised of himself, the Chairman Wesley, Rael, Korugist and a pastor. That they had been given 2 surveyors and 2 policemen to help in then exercise.
 72. She confirmed that she knew where the 1st Defendant's land was and that the said land had been vacant when they had visited it. That the Plaintiff who had been standing there claimed that the land had been his but did not show them any building. She maintained that the land had not been cultivated and that it had thorn bushes. That subsequently, they had advised the Plaintiff to go to the lands office. That she came to know the 1st Defendant when they attended a case that had been presided over by the chief.
 73. She confirmed that there was a house on the land that had been built by the 1st Defendant at the time they went to meet for the case wherein the Plaintiff and his wife had attended. That upon the Plaintiff's wife demanding that the person who had built on the land removes the "garbage", the chief had ended the said meeting. That a subsequent meeting with the District Commissioner had not been finalized because they had been served court documents wherein the District Commissioner had declined to hear the case.
 74. She confirmed that it was the 1st Defendant who was living on the land where she had built and had planted trees and grass and also had cattle dam.
 75. In cross-examination, she confirmed that she had lived in Ol Jorai since the year 1994 and that her deceased husband, one Henry Gachange had also lived there. She confirmed that her husband owned plot No. 791 which land he had been given by the Government through the lands office.



76. She confirmed that she was a committee member. That the Plaintiff had 3 letters for the same land. She also confirmed that they had visited the suit land in the year 2008 and found that it was vacant. That whereas they had found the Plaintiff on the land claiming that the same had been his, he had neither shown them any evidence nor a building. That there had been trees on the suit land which were about 10 years old.
77. She confirmed that she had known the 1st Defendant since the year between 2009-2010 but that she had known the Plaintiff since the year 2008. That whereas she was not aware whether the photographs had been produced, the 1st Defendant had built on the land.
78. In re-examination she testified that plot No. 791 had no dispute and that she had never seen the Plaintiff cultivating on the land.
79. Samuel Kimurid Chelal testified as DW4 to the effect that he lived in Ol Jorai location from the year 1996 and that the 1st Defendant was his neighbor whom he had known for about 10-11 years.
80. He testified that there arose disputes on the land because some people had province letters while others had the letters by the ADC, they had met in the year 2009 and decided to end the issue by visiting the ground and revising all the letters. That they had three meetings whereupon the committee members had been told to visit house to house and look at the development on the land.
81. That his village chairman had been Wesley Kibet, DW2 herein who had gone from house to house between the year 2010 and 2011 and recorded the same. He confirmed that the 1st Defendant had not been there. That thereafter, a list had been brought wherein it had been indicated that the suit land was vacant.
82. That those people without land had been advised to make their applications. They complied although he did not know who had or had not been allotted the land. That the 1st Defendant was later shown the land.
83. That while living on his land, plot No. 880, he had seen when the 1st Defendant started living on the suit land which land had previously not been utilized. That the 1st Defendant had fenced the land, cultivated it and planted maize, beans and grass. That she had also built a house and a toilet therein, dug a dam and was still utilizing the land.
84. That he knew the Plaintiff when they had attended a meeting at the chief's office. He adopted his witness statement as his evidence in chief and explained that the meeting at the chief's office did not end well because of the skirmishes where the Plaintiff's wife had demanded for the removal of 'the garbage' on the land.
85. That he had been on his land in the years 2007 and 2008 during the post-election violence. That whereas some people had been chased away, the Plaintiff had not been among the affected. That in any case, in the years 2007 to 2008 the suit land had been vacant.
86. In cross-examination, he confirmed that he had lived in Ol Jorai since the year 1996 first as a squatter and later on the parcel of land No. 680. That he had been given allotment letter by the settlement scheme wherein the province number had been 357 which had been changed and was now No. 680. He confirmed that his neighbor's plot was No. 681 while the 1st Defendant's plot was No. 682.
87. That since there had been complaint about the allotment letters, they had had a meeting with the District Commissioner wherein it had been agreed that the said allotment letters be revoked. That whilst the minutes of the said meeting had been taken, they were not in court. That however, he did not know whether the notice to revoke the allotment letters had been issued.



88. That whereas he did not know PW2, whoever had done development on the land at the time, had been given the said land. He confirmed that the suit land had been vacant. That whereas there had been post-election violence in the years 2007-2008, some people had been displaced and not others.
89. That although the 1st Defendant was utilizing the suit land, he had not seen any photographs to that effect. That nonetheless, what had been important then was the development of the land like the house built thereon. In re-examination, he confirmed that there had been post-election violence between the Kalenjini and the Kikuyu communities.

The 1st Defendant had thus closed her case.

Determination.

90. I have considered the matter before me, the evidence as well as the submission, the authorities and the applicable law. It is not in dispute that the matter herein is grounded on two letters of allotment of the suit properties. The first one dated the 24th October 1988 issued by the Provincial Commissioner to the Plaintiff/Appellant for plot No. 359, which later changed to land parcel No. 682, for reasons to be given later, and the second one issued to the 1st Defendant/Respondent on the 16th August 2010 for plot No. 682 measuring 2 hectares.
91. The Plaintiff's case was that upon being issued with an allotment letter, he had been shown the land by a surveyor in the year 1989 wherein he had taken possession and occupation of the land and wherein he had proceeded to utilize the same for about 30 years. That he had even kept a caretaker to look after it. That however, during the post-election violence in 2007, many people had been displaced within Ol Jorai Scheme wherein, in the year 2010, people who had been allocated land had been contacted and asked to return to their respective plots so that their particulars could be taken for purposes of issuance of title. That he had given out his letter of allotment and Identity Card to the surveyor for registration however his name had not been on the list of persons who had been allotted land. That his numerous complaints to the administration bore no fruits wherein in the year 2016, the 1st Defendant forcefully entered into his piece of land and built a house. He however confirmed that he had no receipts of payment of the allotment. His witness PW2 supported his evidence but testified that unlike the Plaintiff whose land had been taken, she had received back her land. The Plaintiff relied on the documents herein above captioned in support of his evidence.
92. The 1st Defendant's case on the other had been that upon the issuance of her allotment letter, she had paid the Kshs. 12,600/= indicated thereon and a penalty fee for late payment all totaling Kshs. 13,870/= in the year 2012 wherein she had been shown an unoccupied land by the surveyor and she took possession and occupation of the same, fenced it, planted trees and grass, put up a cattle dam and settled. That in the year 2015, when she went to pick up her title deed, she had been informed that the Plaintiff lay claim to the parcel of land. That their attempt to solve the dispute before the local administration did not bear fruit as the present suit was filed. She also relied on the documents as herein above captioned in support of her evidence.
93. The 1st Defendant's witnesses who were the village elder and committee member respectively confirmed that indeed Ol Jorai area had been affected by the post-election violence in the year 2008 wherein people had been chased away but had later gone back to their lands. That because allotment of the land had been done by various entities like ADC, the Provincial Commissioner and 'Chargon' whereas other people had no allotments, in the year 2009, it had been decided at a meeting with the District Commissioner that a committee be formed, all the allotments be revoked, and the committee make a house to house visit, locate the land and their owners, and assess the development of the land so that they would register them and issue fresh allotment letters and also register vacant land. This exercise



thus explains the basis of the change of the numbers of the previous allotted plots although the position on the ground did not change.

94. That during this exercise, between the year 2010 and 2011 they found the Plaintiff standing on a vacant suit land where he had lay claim over it despite it not having any building or activity of cultivation. That the suit land was overgrown with thorn bushes. That thereafter, a list had been compiled indicating that the suit land was vacant.
95. That subsequently people without land had been advised to apply. They complied and that was how the suit land was allocated to the 1st Defendant who then took possession and occupation and proceeded to develop it.
96. Having summarized the matter herein issue the what stands out for my determination is;
 - i. Whether the trial Magistrate should be faulted.
 - ii. Whether the appeal herein is merited.
97. It is trite that allotment letters do not confer a proprietary right to land but are only a right to receive property or to be allocated on complying with the terms and conditions stated therein and therefore ought to be determined in accordance with the ordinary rules of contract. A litigant therefore who basis his/her interest in land on the foundation of an allotment letter must provide the allotment letter attached with a part development (PDP) plan from the Commissioner of Lands. The claimant must also have proof that they complied with the conditions set out in the allotment letter being the payment of the stand premium and ground rent having had been paid within the specified timeline. A beacon certificate would also add some weight to the transaction.
98. The Supreme Court in the case of Torino Enterprises Limited v Attorney General (Petition 5 (E006) of 2022) [2023] KESC 79 (KLR) (22 September 2023) (Judgment) at paragraphs 60 and 63 had observed as follows:

“ So, can an allotment letter pass good title? It is settled law that an allotment letter is incapable of conferring interest in land, being nothing more than an offer, awaiting the fulfilment of conditions stipulated therein. In *Dr Joseph NK Arap Ng’ok v Justice Moiyo Ole Keiyua & 4 others* CA 60/1997 [unreported]; and in *Gladys Wanjiru Ngacha v Teresa Chepsaat & 4 others* HC Civil Case No 182 of 1992; [2008] eKLR, the superior courts restated this principle as follows:

“It has been held severally that a letter of allotment per se is nothing but an invitation to treat. It does not constitute a contract between the offerer and the offeree and does not confer an interest in land at all ” [Emphasis added].

.....Suffice it to say that an Allottee, in whose name the allotment letter is issued, must perfect the same by fulfilling the conditions therein. These conditions include but are not limited to, the payment of a stand premium and ground rent within prescribed timelines. But even after the perfection of an allotment letter through the fulfillment of the conditions stipulated therein, an allottee cannot pass valid title to a third party unless and until he acquires title to the land through registration under the applicable law. It is the act of registration that confers a transferable title to the registered proprietor, and not the possession of an allotment letter.’

99. In the instance case, apart from being in possession of an alleged letter of allotment, dated the 24th October 1988 which to me was an ordinary letter that did not specify the plot number, the stand



premium, ground rent or the time lines for payment, default clause and/or any other condition(s) contained in an allotment letter, the Appellant did not provide any evidence that he had complied with any condition that pertains to an allotment letter. Indeed, by his own admission, he had not even made any payments for the plot.

100. I therefore find that in the absence of a valid letter of allotment wherein the Appellant had accepted the offer by complying with the conditions set out therein, which included payment of the stand premium, ground rent and within the specified timeline as stipulated in the said letter of offer, the Appellant cannot claim to have any proprietary rights over plot No. 682 Ol Jorai Phase II Settlement Scheme.
101. I therefore agree with the trial court's reasoning and find no merit in the appeal which I now dismiss with costs.

DATED AND DELIVERED VIA MICROSOFT TEAMS AT NAIVASHA THIS 5TH DAY OF JUNE 2025.

M.C. OUNDO

ENVIRONMENT & LAND – JUDGE

