



**Nyamu & 12 others v Attorney General & 3 others (Environment and Planning
Petition 627 of 2009) [2025] KEELC 5261 (KLR) (10 July 2025) (Judgment)**

Neutral citation: [2025] KEELC 5261 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND PLANNING PETITION 627 OF 2009**

AA OMOLLO, J

JULY 10, 2025

BETWEEN

- ANTHONY M. NYAMU 1ST PLAINTIFF**
- RAVITEX LIMITED 2ND PLAINTIFF**
- GARDEN VIEW VILLAS LIMITED 3RD PLAINTIFF**
- KINGAWA HOLDINGS LIMITED 4TH PLAINTIFF**
- OLIVER JAGALO OGOLAT T/A JAGLA ENTERPRISES 5TH PLAINTIFF**
- KENNETH STRAVENS, ISAAC KIMANI KANYINGI JOHN MUNDIA
NKUNGE (SUING ON BEHALF OF THE LIFE MINISTRY
KENYA) 6TH PLAINTIFF**
- JANE MWANGI 7TH PLAINTIFF**
- SIMON LESIRMA 8TH PLAINTIFF**
- MORRIS NJUGUNA MWIRIGI, JOSEPH MWANGI MUNYUA, ELIZABETH
WANGUI MBUGUA (ALL T/A ELIMOJOS ENTERPRISES) 9TH PLAINTIFF**
- KENNETH KIMARI GITERE 10TH PLAINTIFF**
- GEORGE NGUGI WAIRERI 11TH PLAINTIFF**
- JARIAN LIMITED 12TH PLAINTIFF**
- MOHAMED KAITTANY 13TH PLAINTIFF**

AND

- THE ATTORNEY GENERAL 1ST DEFENDANT**
- THE MANAGEMENT COMMITTEE VETERINARY LABORATORY SPORTS
CLUB 2ND DEFENDANT**



THE DIRECTOR OF VETERINARY SERVICES 3RD DEFENDANT

THE NATIONAL LAND COMMISSION 4TH DEFENDANT

JUDGMENT

1. Vide a plaint dated 26th November, 2009, the 13 plaintiffs took out these proceedings against the 4 defendants. The plaint was subsequently amended with the active claim now contained in the fourth amended plaint dated 8th November, 2017. The plaintiffs seek the following reliefs;
 - a. A declaration that the defendants' encroachment onto the Plaintiffs' respective suit properties without their consent is unlawful;
 - b. An order of permanent injunction restraining the defendants, their servants and/or agents from encroaching, trespassing, alienating and/or in whatsoever manner interfering with the plaintiffs' properties namely LR No. 21726, LR No. 21698, LR No. 21699, LR No. 21701, LR No. 21703, LR No. 21720/1, LR No. 21702/2, L.R No. 21728, L.R No. 21725, L.R No. 21697, L.R No. 21718/1, L.R No. 21718/2, L.R No. 21718/3, L.R No. 21718/4, LR No. 21700 and LR. No. 24654 and any other Plaintiffs parcels of land situated within Nairobi.
 - c. An order requiring the defendants or any one of them either by itself or through any of their or its servants or agents or however to forthwith vacate the respective parcels of land (suit properties) known as L.R No. 21726, LR No. 21698, LR No. 21699, LR No. 21701, LR No. 21703, LR No. 21720/1, LR No. 21720/2, LR No. 21728, LR No. 21725, LR No. 21697, LR No. 21718/1, LR No. 21718/2, LR NO. 21718/3, LR No. 21718/4, LR No. 21700 and LR No. 24564 and hand over vacant possession to the respective plaintiffs.
 - d. In the alternative to prayer (a), (b) and (c) hereof an order that the Defendants jointly or severally compensates each of the respective plaintiff for their respective parcel of land suit properties at the current market value/rates.
 - e. An Order for Mesne profits against the 2nd and 3rd Defendants for trespass.
 - f. An Order for Damages against the 1st and 4th Defendants for the unlawful cancellation of the titles to the suit properties namely L.R No. 21726, LR No. 21698, LR No. 21699, LR No. 21701, LR No. 21703, LR No. 21720/1, LR No. 21720/2, LR No. 21728, LR No. 21725, LR No. 21697, LR No. 21718/1, LR No. 21718/2, LR NO. 21718/3, LR No. 21718/4, LR No. 21700 and LR No. 24564 in Kabete within Nairobi.
 - g. Costs of the suit.
 - h. Interest on (d), (e) and (f) at Court rates.
 - i. such other or further relief the court may grant.
2. In support of the reliefs claimed, the plaintiffs pleaded that they were at all material times the allottees of each of the respective plots set out in paragraphs 18 to 29 as well as in the reliefs of the fourth amended plaint. That these parcels were largely excised from L.R No. 2952/R while the 2nd Respondent's plot No. 22377 was excised from L.R No. 189.



3. The plaintiffs pleaded that some of them were lawful beneficiary by way of allotment while some are innocent purchasers from the lawful allottees. That 10th plaintiff purchased 5 acres comprised in L.R No. 221697 from Bank of Baroda Ltd through a public auction.
4. This claim arises from the Defendants acting singly or jointly by trespassing on to the plaintiffs' parcels of land without first obtaining their consent. The particulars of trespass stated inter alia:
 - i. Encroachment
 - ii. Digging trenches and/or excavating on the suit properties.
 - iii. Pulling out and or cutting fences and survey beacons on the suit property
 - iv. Fencing off access paths.
5. Prior, subsequent or simultaneous with the said trespass, the 4th defendant purported to cancel the plaintiff's respective titles to their respective parcels of land claiming vide a Gazette Notice No. 16531 dated 21st December, 2010 alleged grounds that the said parcels were unlawfully excised out of Government Land which had been set aside for a sports club. The Plaintiffs deny that their respective parcels of land were unlawfully excised out of land that had been earmarked for expansion of the 2nd defendant's golf course or for any other public use as claimed or at all.
6. The Defendants denied the claim and filed two sets of defences. The 1st and 3rd Defendants filed a joint statement of defence dated 25th September, 2014. The 1st and 3rd Defendants pleaded that L.R Nos 189 and 2952 has never been gazetted, advertised and or offered for sale under the Public Procurement and Disposal Act or any other law. Hence the alleged acquisition and allocation to any party is null and void abinitio. They pleaded that they are the lawful owners of the two parcels L.R. Nos. 189/R and 2952/R.
7. The 1st and 3rd Defendants plead that the titles held by the plaintiffs were irregularly, fraudulently and unlawfully acquired. That the titles should be cancelled by this court on the ground that the same is government land. They urged this court to dismiss the suit.
8. The 2nd defendant filed a statement of defence dated 16th November, 2012 and amended on 17th June, 2014. It pleaded that the 2nd defendant is owned by the department of Veterinary Services Ministry of Livestock development. That the land where the club and golf course is situated is public property whose custodian is the 3rd Defendant.
9. The 2nd Defendant denied that the land has been degazetted and set aside for private use. It denied trespassing on the suit premises as alleged by the plaintiffs and denied that the plaintiffs have been in possession of the suit parcels.
10. The 2nd Defendant further pleaded it was granted 75 acres by the 3rd Defendant on 20th June, 2006 to carry development and extend the golf course. That it extended the golf course pursuant to the permission and is on the said land as of right. The 2nd Defendant urged the court to dismiss this suit.
11. The 4th Defendant re-amended its defence vide the statement of defence dated 9th March, 2015 and filed on the 11th March, 2015. It pleaded that Land Reference 189/R and 2952/R are government land reserved for the activities of Ministry of Livestock, Agriculture and Fisheries. They aver that the suit properties were never surrendered to the government hence the alleged allocation to any party is null and void abinitio.



12. The 4th Defendant counter-claimed that the titles held by the Plaintiffs were irregularly, fraudulently and unlawfully acquired. It avers the said titles should be cancelled by court on ground that the land is unalienated government land.
13. The 4th Defendant listed the following as grounds of the fraud;
 - a. The Plaintiffs applied for allocation and registration as proprietors of the parcels known as L.R 21726, 21698, 21701, 21703, 21720/1, 21725, 21728, 21797 (original No. 7660/21/2) knowing and aware that the land was public utility land occupied by the Ministry of Agriculture Veterinary and Livestock and reserved as per gazette Notice Number 16531.
 - b. Applying for allocation of government land knowing that the land had been gazetted as per Gazette Notice 16531 for public purpose without being degazetted and set aside for private acquisition.
 - c. Obtaining title deeds to public land without approval of part development plans (PDP) as the area had not been planned for private user.
14. Consequently, the 4th Defendant pray for judgment against the plaintiff thus;
 - i. An order dismissing the plaintiffs' claim.
 - ii. A declaration that the allocation and subsequent registration of the plaintiffs as proprietor of land parcels known as L.R 21698, 21699, 21701, 21703, 21720/1, 21725, 21728, 21797 (Original No. 7660/21/2) was irregular and tainted with fraud.
 - iii. A declaration that the Plaintiffs have never had possession of the land parcels known as L.R No. 21698, 21699, 21701, 21703, 21720/1, 21725, 21728, 21797 (original No. 7660/21/2).
 - iv. An order cancelling the titles known as L.R No. 21698, 21699, 21701, 21703, 21720/1, 21725, 21728, 21797 (original No. 7660/21/2).
 - v. Costs of this suit and counterclaim.
15. The plaintiffs filed replies to the statements of defence reiterating there is merit in their claim.
16. At the close of pleadings, the hearing commenced on 13th July, 2016. The plaintiffs called twelve (12) witnesses in support of their claim. The Defendants relied on the evidence of three (3) witnesses. The first plaintiff Anthony M. Nyamu testified as PW 1. He adopted his further witness statement dated 13th February, 2015.
17. PW 1 stated that he is the owner of L.R No. 21726 and produced a copy of the grant which he confirmed was unsigned. The witness said he was previously issued with allotment letter and made full payment for plot 21726. That he had not been issued with a grant because of the gazettee No. 16531 of 21st December, 2010. That this gazette notice revoked several titles including his No. 21726.
18. PW 1 continued in evidence that he was a farm manager of the 3rd defendant and knew the history of the two blocks of land L.R NO. 189 and 2952 as unalienated government land. According to him Veterinary activities were consolidated on L.R NO. 189/R. That his land originated from L.R No. 2952R which was subdivided into 133 plots.
19. It was the evidence of the 1st Plaintiff that he applied for allocation of one of these plots to the Commissioner of Lands. That a number of correspondences were also brought to his attention over these plots (which he has filed). That LR No. 2952/R belonged to the government not the 3rd



- defendant. He said that they challenged the gazette Notice No. 16531 vide HC JR. No.49 of 2011 and they were successful.
20. PW 1 said he was not in possession of his land as the 2nd defendant invaded it and took possession. He urged to be granted the reliefs sought in the fourth amended plaint. He produced as Pex 1 and 2 the gazette Notice No. 16431 and judgment in JR 49 of 2011.
 21. In cross-examination by Mr. Motari State Counsel, PW 1 said he did not agree with contents of the gazette notice which described his land as reserved for public purposes. He agreed that his letter of allotment had come out in 3 names; Mike Kariuki, Julius Kithinji and himself. PW 1 confirmed the two (Mike and Julius) are not plaintiffs herein. He also admitted not producing receipts he used for paying for the plot and added that the original letter of allotment was surrendered to the Commissioner of Lands when he was issued with a draft grant.
 22. PW 1 said that he heard about the allocation from his seniors and he had also seen the surveyor on the land. That the Cabinet had given approval for subdivision of L.R No. 2952/R. He was aware of the 2nd defendant who he describes as an elitist Golf Club. That he was managing all land in Kenya which belonged to the Veterinary Services. The witness admitted not producing letter of allotment, receipts of payment for stand premiums and the beacon certificate.
 23. During further cross-examination by Mr. Kairairia for 2nd Defendant, PW 1 stated that L.R No. 2952/R was public land that it was not for Veterinary Services, University of Nairobi or the children's Home. PW 1 admitted that they used to graze animals on L.R 2952/R to keep trespassers away. That the membership of the 2nd Defendants is open to the public, employees of 3rd Defendant and University of Nairobi staff.
 24. In re-examination by Mr. Litoro, learned counsel, PW 1 said he knew all land allocated to the 3rd defendant but L.R 2952/R and 189/R was not reserved for them Defendant). That the 2nd Defendant is a private members club not a public entity. That they filed this suit before their titles were revoked.
 25. Lawi Kigen Kiplagat testified as Pw 2 on behalf of the 2nd Plaintiff. He stated that the 2nd plaintiff owns L.R No. 21698 after being issued with a letter of allotment. That he applied for the plot under the name of Rifer Housing Ltd but the letter came out as Rift Valley Housing Ltd. This caused him to write to the Commissioner of Lands and ask to be issued with another letter of allotment with the correct names.
 26. The witness avers that the error was corrected and was issued with another letter on 13th August, 1999. He produced the two letters of allotment as Pex 3 and 4 as well as the letter to the commissioner on 20th July, 1999 to rectify the error as Pex 5. PW 2 produced letter dated 23rd September, 1999 (Pex 6) asking the Commissioner of Lands to convert the payment made in respect of P ex 3 to reflect payments for P ex 4.
 27. He produced receipts for payments made for survey (found at pages 153 – 155) as P ex 7. He also stated that he had a copy of the deed plan for their land received from the surveyors. That soon thereafter, he sent the deed plan to the Commissioner of Lands to be issued with a grant but they were not issued with title because of some interference.
 28. PW 2 said they were not in possession of the suit land as they were chased away by the 2nd defendant who claimed they had permission of the 3rd defendant. It was the 2nd plaintiff's evidence that they took possession in the year 2000 until the invasion in 2009. This is what mad them file this suit.
 29. During cross-examination, PW 2 admitted he has not produced a certificate of incorporation of the 2nd plaintiff. That the application was made in the name of Rifer Housing Co. Ltd. That he learnt about



- the availability of the land from the office of the Commissioner of Land being allocated at KARI. He applied before visiting the land and paid for the allotment on 2nd April, 1998 which was outside the 30 days period.
30. PW 2 said he was not aware this was government land reserved for the Ministry of Agriculture. That he had made payment to the allotment letter in the name of Rift Valley Housing Co. Ltd but not the allotment bearing the 2nd Plaintiff's name. He affirmed that at paragraph 6 of P ex 3, the government had put a disclaimer. The witness said he had no problem with the government as his claim is against the 2nd defendant.
 31. In further cross-examination by Counsel for 2nd Defendant, PW 2 reiterated that he is a businessman and director of 2nd plaintiff. He admitted to having served as Assistant Minister, Director of privatization and Director of NHC amongst others. That he learnt of availability of this land after he visited the Commissioners of Lands office to inquire if there was land available for development.
 32. He stated that he knew the general area where the land was and engaged a surveyor to place beacons. He admitted not paying for the allotment within 30 days of issuance. PW 2 said he was not aware Kamwere & Associates had been engaged to carryout the survey by KARI.
 33. That the earlier letter of allotment was referenced 26199/VI while the later letter is reference 199442. That his letter requested transfer of fees dated 23rd August, 1999 but he had no response from the Commissioner. That the Commissioner of Lands did not process title for them because the golfers chased them away in 2003. That the golfers ploughed the land and removed the beacons, thereafter, the golfers planted grass.
 34. Under further cross-examination by Mr. Wahome advocate, the witness said he was privy to the allocation process at the Ministry of Lands. That the 2nd Plaintiff was allocated L.R No. 216988 as surveyed land. He was advised to pay survey fee (to Ms Kamwere & Associates). He did not have a copy of the letter he wrote for applying for the land.
 35. The witness stated that he did not know whether the company Rift Valley Housing Company Ltd existed. That he asked for change of name in the allotment letter after he was unable to trace the file for Rift Housing Co. Ltd. He was not aware that Ref. 199442 is for a different parcel. In respect to the disclaimer in the allotment letter, PW 2 said the government cannot run away from the contract by hiding behind the disclaimer.
 36. In re-examination, PW 2 re-stated his evidence in chief that there was a delay in making the payment because of the error in name in the letters of allotment. He also referred to the payment of Kshs.311950/= in respect of the first wrong allotment. That he has not been issued with title as he was informed the processing was slowed down and there was demand for large rent; later on, the process was cancelled.
 37. George Ngugi Waireri testified as PW 3. He is the 11th plaintiff and adopted his witness statement dated 4th February, 2015. He stated that he owns L.R No. 21718/1, 2, 3 and 4 and produced copies of his titles contained in plaintiff supplementary bundle) as paragraph 8. He also produced copies of rates and rents receipts for his properties as Pex 9.
 38. The 11th plaintiff avers that he acquired the property through purchase in 1996 from the original owner. He was seeking for orders of vacant possession and for compensation for loss of use.
 39. During cross-examination, PW 3 said he is the registered owner of the four properties. That his claim is supported by the documents produced. He admitted not producing a copy of sale agreement. That



- the seller was Njui Agencies but he did not have a copy of letter of allotment issued in favour of Njui Agencies (and whose name does not appear in the grant).
40. That before buying, he visited the suit land and found the land vacant. He said he was also shown the beacons as he was accompanied with a surveyor. That he had engaged Wanjama & Co. Advocates who did due diligence. He was registered as owner in the year 2002. That he fenced the land after getting title but the fence was brought down. That is when he realized the land had issues and decided to come to court.
 41. The witness stated that he tried to fence the land in the year 2003 but the fence was brought down. The suit properties are currently occupied by the 2nd defendant. That the land belonged to the government before allocation to Njui agencies and that the 2nd defendant has no connection with government. Neither was he aware that the 3rd defendant is the chairman of the 2nd defendant.
 42. PW 2 said the properties were transferred to him by Njui Agencies although he did not produce copies of the transfer. Besides the copies of title, he admitted not producing documents supporting the sale and transfer to himself. He said he had paid rent upto date. He affirms not complying with condition 2 of the grant which required him to develop the land within a period of 24 months.
 43. During re-examination, PW 3 stated that he has been paying rents and rates to the government and County government respectively. That he did not develop the properties because he was denied possession. That the 2nd defendant did not consult him before entering on to his private land and that he challenged the revocation of his title vide the judicial proceedings (JR 49/2011).
 44. Under cross-examination by court, PW 3 said that when Lucy Mbugua of Njui agencies approached him, she had letters of allotment for the suit properties. He paid Kshs.8,000,000 for the four parcels of land. That he made payment in instalments, in cash and cheque to Njui Agencies.
 45. Arnold Albert Nzova was PW 4 representing the 6th Plaintiff. It was his evidence that the 6th plaintiff was the owner of L.R.No. 21720/2. Pursuant to a donation by Teenage and Beyond for Christ who was the initial allottee of 21720. That L.R 21720/1 was donated to Ladies Homecare Spiritual Fellowship. Following the donation, the 6th Plaintiff was issued with a new allotment dated 1st September, 1997 (found at page 22 of the supplementary bundle).
 46. The witness admitted he did not have the original allotment letter. He also did not have original of the receipt dated 13th December, 1996. The production of these documents were objected to and the court upheld the objection. The original title/grant I.R. No. 79457, L.R. 21720/2 was available and a copy thereof was produced as P ex 10.
 47. Under cross-examination, PW 4 admitted that they have never taken possession of the suit property because the 2nd defendant has encroached on it. That the land was donated to the church for the development of a Student Retreat Centre. That the name of the Land registrar who prepared the grant is not given on the grant. That paragraph 23 of their claim describes their land as unsurveyed. He conceded that unsurveyed land cannot have a number.
 48. PW 4 was not aware that in respect of LR No. 21720/1, a deed of indemnity was given to the 7th Plaintiff. That the letter of allotment dated 1st September, 1997 was in respect of plot "B" Waiyaki Way. He did not have a receipt for payment made to the surveyor by the 6th Plaintiff. Nor receipts for payments made for processing of their title. He reiterated that the 2nd Defendant is a trespasser. He could not tell when the 2nd Defendant took occupation because he was not the national of the 6th Plaintiff leader before 2013.



49. In re-examination, PW 4 stated that the grant produced has a deed plan. Therefore, he can locate the property using a deed plan. That the 3rd Defendant has not shown them their title yet it is the 3rd Defendant who authorized the 2nd Plaintiff to enter their land.
50. PW 5 was Simeon Saimanga Lesirma and he is the 8th Plaintiff. He is claiming L.R 21728, Kabete. He produced a copy of his title as MFI P. 11. He stated that he did not have the original because it is with an advocate of an intending purchaser. That he was selling the land to the 7th plaintiff.
51. He confirmed not being in possession because the 2nd defendant had encroached on it. In cross-examination, PW 5 stated that he has not produced a copy of the allotment letter, receipts for payments and or the certificate of search. PW 5 admitted he was Permanent Secretary in the Ministry of Livestock until 1991. That he was aware 2nd Defendant is a club of Veterinary doctors who graduated from the University of Nairobi School of Veterinary and Agriculture.
52. PW 5 also admitted there was no advertisement for the public to apply for allocation of the impugned property. According to him, the suit property was unalienated government land. That the land was surveyed by James Kamwere on instruction of the government. He recalled the 3rd defendant used to graze cattle on it.
53. That the encroachment took place in 2009 and by then, he had not developed his land. That the 2nd defendant fenced off this land plus the lands of the other plaintiffs. He described the encroachment as violent. He added that he has lost a lot of money in form of rates & rent paid to the government. That he was selling the land to raise school fee for his children but the sale was not completed.
54. During re-examination, the witness reiterates that the suit property was not reserved for public use. That he was not shown any caveat placed on the suit title by the defendants. Neither did the 2nd & 3rd defendants show him any title when they encroached on his land.
55. Elizabeth Wangui Mbugua testifying as PW 6 gave evidence on behalf of the 9th plaintiff. She stated that the 9th plaintiff is comprised of three partners who are all parties in this suit. Its certificate of registration was produced as P ex 12. The witness stated that the 9th Plaintiff owns parcel L.R No. 21725.
56. She avers that the allotment letter bears the name of Rurago Ltd but averred that Rurago is related to the 9th Plaintiff because it belongs to one of the Elimojo Partners called Morris Njuguna Mwirigi. The certificate of incorporation for Rurago was produced as P ex 13. She stated that their letter of allotment got burnt in the offices of Morris Njuguna.
57. PW 6 continued that a deed plan No. 206090 was prepared and approved by the Director of Surveys. She produced a copy thereof as P ex 14 and a receipt dated 3rd November, 1999 as P ex 15. She continued that they requested the Commissioner of Lands to issue them with a letter of allotment in the name of the 9th Plaintiff. That the requested was accepted and one was issued copy filed at page 28 of the Plaintiffs' bundle.
58. The witness added that they were not issued with title to their property because of the gazette notice (P ex 1) saying the land was not available for allocation. She added that they did not pay the sum of Kshs.252,850 indicated on the allotment letter at page 28 because of the gazette notice. The allotment letters were produced as Pex 16 & 17.
59. During cross-examination, PW 6 stated that Rurago Ltd and Rurago Enterprises Ltd are one and the same. That the letter of allotment had an error for leaving the word "enterprises" out. She admitted not applying for correction of the error. She affirmed that Rurago Enterprises Ltd was registered on 4th February, 2009 hence in 1996, it was not in existence.



60. Ms. Elizabeth agreed that the 9th Plaintiff did not comply with the conditions in the letter of allotment. That they obtained the deed plan prepared on the strength of the earlier letter of allotment. She admitted that the deed plan was also prepared before they made the part payment in 1999. That the 9th Plaintiff is not in possession of the land.
61. In further cross-examination, the witness accepted that they were allocated surveyed land L.R 21725 vide letter of allotment dated 10th May, 1996. Yet their deed plan (P ex 14) was approved on 26th June, 1996. She explained the variance could be the allocation being premised on the PDP pending processing of the deed plan. She consent not presenting evidence of relationship between Morris Njuguna and Rurago Enterprises Ltd.
62. That she heard about the plots through a friend. That they used Rurago Enterprises while making an application. They did not pay Kshs.252,950 in the letter of allotment of 18th February, 2000 and have not done so todate. They have not taken possession.
63. In re-examination, PW 6 said she is not a director of Rurago Ltd or Rurago Enterprises Ltd. That the application for allotment was done by Morris Njuguna in the name of Rurago Ltd. That the letter of 18th February, 2000 superceded the letter of 10th May, 1996. According to PW 6, their file reference is No. 189624 which is also used in the allotment letter dated 18th February, 2000.
64. She avers that the allocation allowed part payment of the stand premiums. She added that the receipt (Pex 15) is in the name of Morris Njuguna who was a director in Rurago Ltd. (Rurago Enterprises Ltd. That they (partners) gave Morris money to make the payments. She asserted that their allotment letters are not fraudulent.
65. Mohamed Kaitany, the 13th Plaintiff testified as PW 7. He is claiming L.R No. 24564 and produced a copy of the title as P ex 18. PW 7 says he is a retired civil servant having worked in many places with last stint being P.S Ministry of Lands. It is his evidence that the 2nd defendant extended his boundary and fenced off his land without his permission. He is seeking the prayers in the 4th amended plaint.
66. PW 7 said he was the permanent Secretary, Ministry of Lands between 1998 – 1999 which is about the same time he was allocated the suit land. He said he was unaware of the evidence of 2nd defendant until this suit was filed. The witness said they did not make any decision to allocate land. He stated that his mandate did not include administration of public land.
67. It was his further evidence that this land was a subdivision of L.R No. 21724. He did not know who owned L.R 21724 before as his was a new grant. He also did not know who prepared the grant and that he did not interact with the surveyor. He applied and was given land.
68. PW 7 confirmed there was no advertising of the suit land being available for allocation. That his application was made generally for any available government land. He says he was given a letter of allotment although he did not produce any copy because he misplaced it.
69. The 13th Plaintiff reiterated that he did not know how his title was processed. He was just informed it was ready and he picked it in the year 2000. That apart from oral request, he did nothing else to acquire the title. He came to know the others plaintiffs when this suit was filed. According to him, he had no knowledge of the land being used for other purposes. He did not take possession because the 2nd defendant extended the golf course on to it.
70. In re-examination, PW 7 stated that while at the Ministry of Lands, he was not informed that the suit property was committed for other public purposes. That he had a right to apply despite the position



he held. That the Defendants have not shown any document to prove the land was reserved. That he did not develop the land because of poor infrastructure in the area.

71. He added that there was no provision in the grant that any breach of the condition would invoke cancellation of the grant. Besides the gazette Notice, PW 7 said he had not received any notice about revocation of his title. That he could not influence the President or the Commissioner of Lands to be allocated the suit land.
72. Kenneth Kimari Gitere testified as PW 8 and was claiming land L.R No. 21697. He avers that in 2009, he saw an advert for sale of the property by public auction placed on behalf of Bank of Baroda Ltd. That he purchased the property through public auction having been declared the highest bidder. He produced a copy of transfer and title issued to him.
73. PW 8 said he took possession after the property was registered in his name. he stated that he instructed a surveyor to identify for him the beacons. That he obtained possession with difficulties after Administrative police officers had been posted to guard the land by the 2nd Defendant.
74. Further, he avers that he tried unsuccessfully to construct a wall in October, 2010. He reported the matter to CID but was not assisted. He said that in 2010, when he went to construct the wall, a mob came from the Golf Club in three (3) groups armed with crude weapons beat him up and left him for dead. They also burnt his pick-up vehicle. He produced photographs of the event as Pex 19.
75. On cross-examination, PW 8 said he had seen the advert in Kenya Times Newspaper of 2009. He attended the auction and was declared the highest bidder. That he paid Kshs.12,002,000/= for the property through his advocates. He did not have a copy of the payment cheque. PW 8 continued that the property was then transferred to him through the firm of Hamilton Harrison & Mathews Advocates (HHM).
76. The witness stated that he had filed another ELC C. 518/2015 which subsequently was consolidated with this case. He asserted that he visited the property immediately he saw the advert and was guided to the property by the auctioneer. That he was attacked when he went to fence the suit property.
77. PW 8 said the persons who attacked for lack of evidence. Since the beating, he has never gone back to the suit plot. He was aware the property was sold as is without any warranties from the auctioneer.
78. The witness denied that he was in company of 200 people when he went to take possession in 2010. He insisted that he was attacked by workers of the 2nd defendant that when he went to take possession, the 2nd defendant had began converting it into a gold course. He insisted that he went to take possession in 2010 not 2015.
79. PW 8 admitted the suit was filed in 2009 seeking to evict trespass from his land. That he was evicted from the land on 30th October, 2010 and joined the suit after 2010. That the other plaintiff land were invaded earlier than his land. He asserted that when he first went to the suit land in 2009, it was not being guarded by APs.
80. In re-examination, PW 8 reiterated that all payments for the purchase of the property were made through the law firm of HHM. That the land sold was not being guarded by Aps when he purchased it. That when he viewed it, there was no evidence that the property was being used by anyone.
81. He said that case ELC 518 of 2015 has never proceeded and that there was an order for consolidation. He concluded his evidence by saying he bought the property for value without notice of the Defendants' alleged interests. PW 8 urged the court to grant him reliefs sought.



82. Morris Njuguna Mwirigi a partner in the 9th Plaintiff testified as PW 9. He stated that he was the one keeping the original letter of allotment ref. 26199/IV in his office. He said his office got burnt on 23rd July, 2001 and his documents including this letter got burnt.
83. The witness said he retrieved the partly burnt letter of allotment and identified it as the one at page 167 of the supplementary bundle. PW 9 identified the letter of allotment dated 18th February, 2000 in respect of L.R No. 21725 which he said was issued after they joined with Elizabeth Wangui (PW 6) and Joseph Munyua to form Elimojos Enterprises. It was his evidence that this letter of allotment (issued in 2000) also got burnt.
84. This witness produced the letters of allotment earlier marked as MFI 16 & 17 by PW 6 as P ex 16 and 17. He confirmed the allotment letters were addressed to Rurago Ltd where he is a director. That he accepted the letter and made the necessary payments.
85. During cross-examination, the witness said he does not work with the Ministry of Lands. He did not have a copy of his application for the land because most of his documents got burnt. He clarified that Rurago Enterprises was a business name before it was incorporated. He avers that he made an application under Rurago Enterprises as Rurago Ltd does not exist.
86. PW 9 confirmed that he was required to pay Kshs.307,784 but only paid Kshs.54,834. To date he has not paid the balance because of this case. He was not aware of that the land was committed before the same was allocated. That he knew the land before it was surveyed and that he had applied for unsurveyed land. That the land was vacant when he applied.
87. PW 9 continued to state that he was allocated the land in 1996 but made payment in 1999. That it is possible to get a deed plan before completing payment and that he learnt about the availability of the property through fellow estate agents.
88. In re-examination, the witness said copies of documents in relation to the suit property would be available in his file at the lands office. That the suit property has not been re-allotted to anyone nor was there a cancellation of his allotment. He reiterated that the land was vacant when it was allocated to him. He was told to pick his deed plan from Mr. Kamwere (PW 12). That he applied for unsurveyed land but was allocated surveyed land.
89. Oliver Jagalo Ogola gave evidence as PW 10. She introduced herself as a businessman trading as Jagla Enterprises (the 5th Plaintiff). His claim is over L.R No. 21703. She contended that she applied for land prior to 1996 and got allotment letter on 4th July, 1996. That on receipt, she paid Kshs.30000 on 26th August, 1996 as the first instalment.
90. The 2nd instalment was paid on 10th July, 1997 and the final instalment of Kshs.167,000 on 25th February, 1997. That he fulfilled the conditions and now waited to be issued with title. He avers that this case started before he got his title but obtained a copy of the grant that was to be issued to him. PW 10 said he has been denied access to the property.
91. The witness produced the letter of allotment his acceptance letter, payment cheques and receipts as P ex 17 – 21 respectively (documents in the bundle filed on 20th December, 2019) the copy of grant was not produced as it was objected to.
92. The witness in cross-examination stated that he is aware of land allocation procedures to some extent. He could not recall who told him the land was available for allocation. That his letter of allocation is referenced 26199/IV and that his acceptance letter was not dated. He admitted paying for the stand premiums outside the 30 days stated in the allotment letter.



93. The 5th Plaintiff's witness asserted that when he visited the land, it was vacant and it is next to the headquarters of Veterinary services. He cleared the trees on the land and is aware he was required to develop the same within 2 years. That the land was allocated as surveyed.
94. In re-examination, PW 11 said the property was surveyed and a deed plan issued but he was not privy to circulation of letters of allotment by the lands office. He reiterated being issued with officials receipts for the payments. That his land has been encroached on by a group of people playing golf.
95. Ngato Gitonga, a shareholder of the 4th Plaintiff was the 11th witness. He said that the 4th Plaintiff was incorporated on 22nd February, 1990 and produced CR 12 to corroborate. It is his contention that the 4th Plaintiff owns L.R No. 21701. He held the original title as contained in the supplementary bundle of documents.
96. PW 11 also produced their application letter for the plot made on 19th February, 1996 and allotment issued on 10th May, 1996. They made payment on 17th September, 1996 vide banking cheque No. 181029 for Kshs.305,334 was issued with a receipt dated 20th September, 1996. That they have not developed the suit parcel because the golfers trespassed on it. He added that the Commissioner of Lands had not put up roads and drainage to enable them undertake development.
97. They filed this case because of the trespass. PW 11 produced his documents as a bundle and was marked as P ex 22 and 23 in support of his case.
98. During cross-examination, PW 11 said the other directors of the 4th Plaintiff are his relatives including his father James Kamwere Muriuki. That it was his father who made the application for allocation. That Mr. Kamwere is a surveyor who was given some work by the government.
99. He said that the 4th plaintiff did not take possession and start development because the Commissioner of Lands had not put in place roads and sewers pursuant to clause 10 of the grant. They were aware the 2nd defendant was given authority in 1996 to extend the golf course.
100. He stated that the 2nd defendant extended the gold course to the area permitted. That they made payment 4 months after allotment. The witness said no search was conducted before applying for the property. That they did not follow up on the issue of PDP for the suit property. The witness said he was not personally involved in the allocation of the land.
101. In re-examination, PW 11 said he did not visit the land because he was out of the Country. By the time he returned, the property was already fenced. That their allotment or grant has never been revoked. He stated they did not pay survey fee because his father who is one of their directors of the 4th Plaintiff was the one undertaking the survey.
102. James Kamwere Muriuki gave evidence as PW 12. He stated that he was instructed by KARI in 1988 to carry topographical survey on L.R 2952/R. That KARI wanted to have title for their land and so the director wanted to know the boundaries between L.R No. 2952/R and 189/R. PW 12 stated that the letter of his instruction was dated 8th November, 21985 (page 186) and produced as P ex 24.
103. After carrying out the survey, he forwarded the plan to Kari and produced it as P ex 25(b). that vide a letter dated 16th December, 1988, KARI acknowledged receipt of the boundary plan. It was the evidence of PW 12 that in the boundary plan, the golf course is on L.R No. 189/R,
104. He proceeded that in consultation with the Commissioner of Lands, he prepared a subdivisional scheme plan for the proposed subdivision of L.R 2952/R – in order to accommodate KARI Headquarters and other plots to be allocated to individuals/government agencies.



105. He contended that L.R 2952/R was government land that was available for allocation. Once he completed drawing the subdivision scheme, he forwarded the same to the Commissioner of Lands (pages 199 – 200 of their bundle). He added that after approval of the scheme plan, he proceeded to place beacons determining the extend of each subplot.
106. It was the evidence of this witness that the survey was checked and authenticated by the director of surveys. Thereafter, he prepared deed plans which created approximately 56 plots. That some people were issued with titles while others have not received and other have developed their land like Kenya Power Sacco who owns 21080/38.
107. PW 12 said the original plan for 2952 is in FR 13/78 and the original Kabete golf course, established in 1922 is on L.R No. 22377. He marked out these plots on the map with those of the plaintiff marked in red. He was also commissioned to subdivide L.R No. 189/R adding that L.R 22377 also arose from his survey.
108. Mr. Kamwere confirmed that there are other government institutions on L.R 189/R. That pursuant to his subdivisions of this land, titles were issued in the name of P.S Treasury in Trust of the Ministry of Livestock when he discovered that L.R No. 22377 was registered in the name of Kabete Golf Course Ltd he reported the matter to C.I.D for investigation.
109. PW 12 affirms he was aware of *Legal Notice no 751 of 1963* which had an inventory of land that was reserved for government use. That L.R 189/R and 2852/R was not listed in that notice. He contended that this made him believe the two parcels were unalienated government land.
110. He denied that L.R No. 189/R was not reserved for Veterinary services. He avers that vide L.N. No. 4141 of 9th November, 1965 the Commissioner of Lands was given power to administer all public land. He asserted that due process was followed in the allocation of land to the plaintiff. That the land was planned surveyed, allocated and titles issued. He maintains that the 2nd defendant's land 22377 does not extend to the land allocated to the plaintiffs.
111. Under cross-examination, PW 12 said he had no evidence showing the land was unalienated. He admitted that he witnessed the 3rd Defendant grazing there randomly on the impugned land. He also said he saw some Maasai grazing during the drought. He agreed that the Ministry of Agriculture was on the ground in 1988 and also Welcome Foundation Trust.
112. The witness confirmed that the letter of 1988 did not instruct him to subdivide the suit land. He conceded that in P ex 24, it is recorded that the Ministry of Livestock was willing to give some land to KARI and so it could not give what it did not have. He continued the documents showed L.R 2952/R and L.R 189, were in use by the Ministry of Livestock and other governance agencies.
113. The witness listed the public institutions that were under the 3rd Defendant to include; Artificial Insemination Section, HITI, the Hay Field, the residential quarters and Kabete Golf Course. He confirmed obtaining titles for all these institutions which titles came out recently. That this instruction was contained in the letter dated 24th November, 1995.
114. PW 12 said he was given verbal instructions by the Commissioner of Lands to subdivide L.R No. 2952/R and affirmed that that the Plaintiffs titles came out of this subdivision. He stated that he is the one who marked the boundaries of the golf course. He avers that the extended 9 holes are on his land.
115. PW 12 said he wrote the letter dated 2nd September, 2009 following a tele conversation he had with the Commissioner of Lands and admitted that he was defending the Plaintiffs' titles in the said letter. He confirmed that this letter was not acknowledged nor did he disclose that he owned one of the plots.



- The witness said those who picked their deed plans from him paid his survey fees and those who did not get the deed plans from him did not pay him.
116. PW 12 denied that L.R 2952/R was reserved but it was under the Ministry of Agriculture and Livestock. He asserted that reservation by the government for a particular use must be in writing. He insists that the 3rd Defendant had no authority to allocate land to the 2nd Defendant for extension of the golf course.
 117. The witness said the 4th plaintiff is also a beneficiary from subdivision of L.R 2952/R. He said the scheme plan was prepared before the allotment while the deed plans were prepared after allotment. It was his evidence that some deed plans were collected from him while others were collected from the office of the Commissioner of Lands.
 118. During re-examination, PW 12 denies the gold club extended to 2952/R. He insisted this land 2952/R was vacant when he surveyed it, except that it was used for random grazing. That KARI was given land from the 2952/R. The witness identified the various parcels of land which different government institution were using. With the evidence of PW 12, the Plaintiffs closed their case.
 119. TIMOTHY MWANGI was the 1st & 3rd defendants' witness. He introduced himself as the Deputy Director of Physical Planning within the Ministry of Lands. He has worked with the Ministry for 37 years. He adopted his witness statement dated 20th February, 2024 as his evidence and produced documents filed as D ex 1 – 11.
 120. Under cross-examination, DW 1 said he had not interacted with Mr. Nyamu, Simeon Lesirma, Lawi Kiplagat or James Kamwere. DW 1 said he knew that the suit properties are within Kabete area fall under the state department of Veterinary Services. It was his evidence that there was no proper planning before the properties were allocated. DW 1 said he had not come across approved PDPs in favour of the plaintiffs.
 121. In further cross-examination, DW 1 states that under section 9 of Government Lands Act Cap 280 (repealed) a Part Development Plan cannot be prepared for land reserved. He insisted that a subdivision scheme plan does not cure the absence of a Part Development Plan (PDP). He admitted that his interaction with the suit properties were limited to matters planning. He confirmed that one of the duties assigned to Mr. Kamwere was to identify boundaries between 189/R and 2952/R.
 122. DW 1 said he had not seen the approved subdivision scheme plan for L.R 189/R dated 11th July, 1997. He agrees the Physical Planning Act came into force on 28th October, 1998 while the letter of allotment and the grants run from 1996. He clarified that the process referred to in his statement was governed by Cap 303 and Section 9 of Government Lands Act.
 123. DW 1 described an unalienated government land as one which does not have a PDP or any government establishment on it. He could not confirm the number of excisions that had been made from 189/R.
 124. Charles Kirui Ngetich testified as DW 2 introducing himself as the Deputy Chief Land Registrar, currently serving in Kuria Lands Registry Migori County. He is also a qualified advocate. He adopted his witness statement filed in court.
 125. His evidence in cross-examination was that any allocation of lease hold must have a PDP prepared. That the PDP would be prepared with local authority who then forwards it to the Director of Physical Planning for other actions (approvals).



126. DW 2 stated that before issuing a title, they rely on correspondence file which Correspondence file contains: Offer letter. Acceptance letter PDP Survey report Valuation for rates/rents Payment of stand premium
127. That the Stand Premium should be paid after the allocation letter. He said that the signature on deed plan should be in the verification box. That the one produced at page 52 of the plaintiffs' bundle is not in the box. He could not tell if there was a perimeter wall between L.R 189/R and 2952/R.
128. Julius Orege testified as DW 3 and gave evidence on behalf of the 2nd Defendant who is accused of the trespass. He denied the 2nd Defendant is a trespasser on the Plaintiffs' land. he produced documents filed by the 2nd Defendant as Dex 1 – 4. He averred that vide a letter dated June 2006, the 2nd Defendant requested for additional land to increase the golf course from 9 hole to 18 hole course. That their request was granted by being given 75 acres.
129. DW 3 said the Construction of the 18 hole was completed in 2008. He denied the club is private and referred the court to the club's constitution to corroborate his assertion. He said the 2nd Defendant is under the control of Veterinary Services and its sits on government land.
130. Under cross-examination, DW 3 said he has been a member of the club for 18 years. That members of the Agriculture & the Veterinary department do not pay membership fees. He also said that paragraph 57 and 58 of the Judgment produced held that in the absence of a PDP, the creation of the subdivisions was illegal.
131. In cross-examination by Mr. Lusi Learned Counsel for the Plaintiff, the witness said the judgment referred to was rendered on 22nd May, 2024 by a court of concurrent jurisdiction to this court. That if a letter of allotment is presented, the findings would be distinguishable to this case. He affirmed that the extended 9 hole falls on the land being claimed by the plaintiffs.
132. According to him, where the extended 9 hole was build sits on government land. He confirmed that L.R 189/R and 2952/R was not listed in the Legal Notice of 751 of 1963. Though he has not seen title for 2952/R, DW 3 insists the 3rd Defendant has been on the suit land since 1923.
133. Referred to documents allocating land to Kingawa Holdings Ltd, DW 3 said Mr. Kamwere was conflicted to benefit from these transactions. In re-examination, DW 3 said that by virtue of the letter dated 7/10/1988 where the 3rd Defendant was willing to grant KARI land to build its headquarter, it was not open for anyone to say 189/R and 2952/R were unalienated government land. That the 3rd defendant is part of the Ministry of Livestock and Agriculture. This marked the end of the defence case.

Analysis and determination:

134. I have considered the pleadings filed, the evidence rendered and the submissions filed. Therefore, I frame the following questions for determination;
 - a. Whether the allocation of land of the plaintiff followed due process.
 - b. Whether or not the 2nd Defendant has trespassed on the plaintiff's land.
 - c. Whether there is merit in the Defendant's counter-claim.
 - d. Who bears costs.
135. There is no contention that the 2nd Defendant is not in occupation of the suit land and that it was government land before allocation. The Plaintiffs claim that such occupation is illegal because the land



- belongs to them. Save for the 3rd and 7th Plaintiffs who did not adduce evidence, the remainder plaintiffs produced documents showing how they acquired rights over the respective parcels of land.
136. As at the time of filing this suit, a few of the plaintiffs had obtained titles (grant). The majority had not and relied on the letters of allotment issued to them. In order for the plaintiffs' claim to succeed given their admission that this was previously government land, they must prove that the land was available for allocation and that due process was followed allocating the same to them.
137. In their endeavour to prove that L.R 2952/R was unalienated government land, PW 1 (the 1st Plaintiff) said that as a farm manager of Veterinary Services, he knew all land that was owned by the 3rd Defendant countrywide. He avers the land owned by the 3rd Defendant was L. R. 189/R and not L.R 2952/R. This witness admitted that Veterinary Services used to randomly graze on this land. His evidence that the land 2952/R did not belong to 3rd Defendant was more of an opinion not corroborated with his document.
138. The other witness with the history of the land was Mr. James Kamwere-PW12. He is the one who carried the survey which generated the plots allocated to the plaintiffs. Mr. Kamwere was also a beneficiary through his company Kingwa Holdings Ltd who is the 4th Plaintiff in these proceedings.
139. PW 12 said he started interacting with this land in 1988 vide the letter of instruction dated 7th October, 1988. This letter read in part thus;
- “The Ministry of Livestock Development is willing to grant a piece of land to the Kenya Agriculture Research Institute (KARI) for the construction of its Headquarters.
- It is expected that this will be done by excising a portion of land west of Welcome (Kenya) Ltd. Laboratories registered as LR No. 2952/R. In order for the Ministry to determine the site more exactly, a full survey of LR No. 2252/R is needed. Also required is a general survey of the adjacent land, LR No. 189 which is the major piece of land on which the Ministry's establishments are located. The survey for LR No. 189 should show its perimeter; major physical features, outstanding permanent developments within it, and any other land marks that may help to identify and characterize the present usage of this land.”
140. The Plaintiffs have submitted that their properties were excised from L.R 2952/R (unalienated government land) following approval and execution of the subdivision scheme by the Commissioner of Lands on 3rd August, 1995 and 27th December, 1995. That the subdivision scheme was subsequently allotted numbers by the Director of Surveys on 23rd August, 1995 and 8th June, 1996.
141. PW 12 asserted that L.R 2952/R was unalienated government land which position is taken up in paragraph 16 of the plaintiff's submissions. However, among the documents produced, there is no document even by way of correspondence that the land was unalienated. The Plaintiffs seem to place reliance on the allocation to Welcome Trust Foundation in 1923 to justify that the land did not belong to the 3rd Defendant.
142. The fact of L.R 189/R and 2952/R occupying different ground space was not in issue. There is also no dispute that the 2nd and 3rd Defendants developments were on L.R 189/R. The dispute arises on the allegation that the Ministry of Agriculture and Livestock's operations were confined only to L.R 189/R.
143. The Plaintiffs' 12th witness referred to and produced a letter of instruction to him dated 7th October, 1988 which from the paragraph cited seem to suggest that it was the Ministry of Agriculture and Livestock under which the 3rd Defendant falls that had authority over L.R. No. 2952/R. A question



was put to the plaintiffs if the land did not belong to the 3rd Defendant, why its line ministry was the one and not the Commissioner of Lands authorizing the excision of part of the land to KARI its headquarters?

144. Further, the process followed in allocating a portion of this land to Welcome Trust Foundation was not in trial in this case. This court cannot tell under what circumstances the land was allocated to that foundation to use it as a baseline of holding that the land was unalienated.

145. The next limb of question one (1) is assuming L.R 2952/R was unalienated government land, was due process allowed in allocating portions of the suit land to the plaintiffs? The plaintiffs submitted on the communique on Land Tenure Policy of 1951 which at paragraph 8 titled “Land in Urban Area Method of Allocating Residential Plots” noted that;

“It has been the practice within recent years to allocate residential plots by direct allotment with the assistance of a local committee. This system will continue.”

146. They also cited certain provisions of the Government Lands Act Cap 280 (now repealed) which came into operation in 1984 and therefore must have superseded the policy of 1951 in so far as grants and disposition in land is concerned. Section 4 states that:

“All conveyances, leases and licences of or for the occupation of Government lands, and all proceedings, notices and documents under this Act, made, taken, issued or drawn shall, save as therein otherwise provided, be deemed to be made, taken, issued or drawn under and subject to the provisions of this Act.”

147. Under section 3 thereof, the President of the Republic of Kenya was given special powers or authority subject to any other written law to make grants or disposition of any estates, interests or rights in or over unalienated government land. The President can delegate that power to the commissioner of lands as stated in section 7 thus:

“The Commissioner or an officer of the Lands Department may, subject to any general or special directions from the President, execute for and on behalf of the President any conveyance, lease or licence of or for the occupation of Government lands, and do any act or thing, exercise any power and give any order or direction and sign or give any document, which may be done, exercised, given or signed by the President under this Act.”

148. For the purposes of the plaintiffs’ claim, part V of Cap 280 is relevant. It states under sections 35(1) and 36 thus;

“35(1). Every application for a lease or licence of or relating to unalienated Government land for any special purpose shall be made in writing in the form prescribed, and shall give such particulars as may be required by rules made under this Act.”

36. Except as provided in this Part, the Commissioner shall not grant any application under this Part except with the approval of the President.

149. Thus, the Commissioner of Lands’ powers were not in law directly to the office holder but was entrusted with powers delegated by the President. In exercising the delegated powers, it is my considered view that the Commissioner verbally instruct the surveyor (PW 12) to subdivide public land for purposes of allocating and then proceed to allocate the same informally as he did in this case.



150. The appropriation of the delegated power was to be applied within the law, say by acting on receipt of a written application as well as a ground report confirming the land was available for allocation. Most of the Plaintiffs did not produce application letters. PW 12 said he was verbally contracted to conduct the survey yet having previously dealt with L.R No 189/R and 2952/R on written instructions and with his vast professional experience in the field of survey one wonders why he would undertake this exercise with no written instructions.
151. It is also not clear who paid his fees to corroborate his evidence that indeed he had valid instructions was from the allocating authority. He said that for the parties who collected deed plans from him, they paid for his survey fee. Those who collected deed plans from the Commissioner of lands did not pay him. He does not list the names of persons who collected their deed plans from him.
152. In light of the evidence presented one can discern the casualness in which the allocation process was initiated. The casual approach was adopted by some of the plaintiffs allotted the land, for instance, none of the Plaintiffs paid the stand premium within 30 days of allocation to them.
153. Second, none of the plaintiffs developed the suit parcels within two years of their allocation arguing that the Commissioner of Lands had not put up roads and sewer as per clause 10 of the grant. Clause 10 of the grant (for those who received their titles) provided thus:
- “The grantee shall pay to the Commissioner of Lands on demand such sums as the Commissioner of Lands may estimate to the proportionate costs of constructing all roads, drains and sewers serving or adjoining the land and the proportionate cost for the supply of both water and electric power and shall on completion of such construction and the ascertainment of the actual proportionate cost either pay within 7 days of demand...”
154. The condition does not state that no development shall be carried out unless there is compliance by the Commissioner of Lands. Second, the costs of doing the construction was still on the shoulders of the grantee. The Plaintiffs did not present evidence that they had not written to the Commission to fulfil this condition to facilitate their developing the land. I find the reliance on this clause 10 as the reason for not complying with clause 2 of the Grant.
155. It was held by the Court of Appeal in the case of *Munyu Maina vs Hiram Gathina Maina* (2013) eKLR thus;
- “We state that when a registered proprietor root of title is under challenge, it is not sufficient to dangle the instrument of title as proof of ownership. It is this instrument of title that is in challenge and the registered proprietor must go beyond the instrument and prove the legality of how he acquired the title and show that the acquisition was legal, formal and free from any encumbrances including any and all interests which would not be noted in the register.”
156. That Plaintiffs title were under challenge because the 2nd Defendant are on their land arguing the same is government land. The illegality of the Plaintiffs title is also challenged by the Defendant’s counter-claim. So have they proved the roof of their title is genuine and valid?
157. The 13th plaintiff said he was not involved in the process of allocation. He made oral application for the land generally but did make any payments for the stand premiums. He was just handed over a grant/ title in his name. At the time of allocation, he was the P. S Ministry of Lands. He also did not produce a copy of the allotment letter. There is no evidence to support the process followed in issuing the grant to him.



158. The 8th Plaintiff did not produce a copy of his allotment nor receipt issued for payment of the Stand Premiums. He said he had about the allocation of this land from the surveyor. The 8th Plaintiff avers that his original title was with some advocate handling a sale transaction which collapsed.
159. This witness had an option of applying to be supplied with certified copies of the allotment letter and receipts from the Ministry of Lands. He did not but wants this court to believe that the land was duly allocated to him.
160. The 9th Plaintiff's name is indicated as Morris Njuguna Mwirigi, Elizabeth Wangui and Joseph Mwangi Munyua t/a Elimojos Enterprises. The parcel of land they are claiming L.R No. 21725 whose initial letter of allotment is said to have been addressed to Rurago Ltd/Rurago Enterprises Ltd. It was their evidence that Rurago Ltd and Elimojos Enterprises are related because Rurago Enterprises Ltd was owned by one of their partners Morris Njuguna Mwirigi.
161. Subsequently, Rurago Enterprises Ltd was incorporated and he wrote to the Commissioner of Lands to rectify the allotment letter. The same was rectified and he was issued with a letter of allotment dated 18th February, 2000 in the name of the 9th Plaintiff.
162. The letter of allotment in the name of Elimojos Enterprises has the same reference number 26199/IV as the 5th Plaintiff's letter of allotment issued on 5th July 1996. If that the allotment letter bearing the name of Rurago Enterprises Ltd was the one transferred to the 9th Plaintiff was the same, it ought to have had the same reference number of 199442. However, on account that it bears the same reference with that of the 5th Plaintiff doubt arises as to which land was allocated to them in the year 2000.
163. Further the 9th Plaintiff was required to pay stand premium as per the allotment, Kshs.307,784 within 30 days from 10th May, 1996. The partners only paid Kshs.54,834 on 3rd November, 1999 and had not paid the balance to-date arguing because of this suit. This suit was filed in the year 2009, approximately eight (8) years from the date of allotment.
164. The 9th plaintiff explanation that the payment was not completed within the 8 years on account of a suit that was not in place does not match character of a diligent person. There was also no evidence of communication made to the Commissioner of Lands for extension of time so that their allotment would not lapse. In the circumstances, I find the claim by 9th Plaintiff does fail for want of due process.
165. The 1st Plaintiff had not obtained a grant in his name at the time of filing of the suit. This witness confirmed the allotment letter for L.R No. 21726 was issued in the name of three persons, two of whom were not party to these proceedings. He confirmed not producing receipt used to pay the Stand Premiums.
166. He also did not have a copy of his application letter to be allotted the land. Neither did he produce receipt evidencing payment for the premiums and other documentation such as acceptance letter supporting this allocation. I find there is no title to be cancelled as there is no title that was issued to him.
167. The 11th Plaintiff acquired his title for L.R No. 21718/1 through purchase. His case is different and would be determined whether he is an innocent purchaser for value without notice. The witness said he purchased the land in 1996 from Njui Agencies. Unfortunately, he did not produce evidence to support the sale transaction such as the sale agreement or a copy of the search (by way of a letter to the Commissioner of Lands) conducted on his behalf.



168. Further, the witness did not present evidence of copies transfers executed in his favour as exchanged with the vendor. The Court of Appeal in Uganda in *Katende v Haridar & Company Ltd* [2008] 2 EA 173, defined a bona fide purchaser for value as follows:

“For the purposes of this appeal, it suffices to describe a bona fide purchaser as a person who honestly intends to purchase the property offered for sale and does not intend to acquire it wrongly. For a purchaser to successfully rely on the bona fide doctrine he must prove that:

1. he holds a certificate of title;
2. he purchased the property in good faith;
3. he had no knowledge of the fraud;
4. he purchased for valuable consideration;
5. the vendors had apparent valid title;
6. he purchased without notice of any fraud; and
7. he was not party to the fraud.

169. The payment of rents does not displace the duty to show the innocence of his purchase. I am unable in the circumstances to find that a good title was passed to the 11th plaintiff without documents to support the purchase and the diligence undertaken before buying.

170. For the 6th plaintiff, they did not apply for the land. they received it as a donation from the first allottee. Upon donation, they were issued with allotment letter dated 1st September, 1997 for L.R No. 21720/21, L.R No. 21720/2 originated from L.R No. 21720/2. The 6th Plaintiff did not produce receipts evidencing payments in respect of processing their title.

171. Their letter of allotment also indicated they were allotted unsurveyed land yet the documents to the land being allocated was already surveyed. Going by the evidence of the surveyor (PW 12), the plots were all curved from L.R 2952/R and given numbers before they were allocated. PW 4 said they did not have PDP for the unsurveyed land allocated to them.

172. Although this was a donation, if the land was procedurally acquired/allocated, the donor is assumed to have surrendered all the necessary documentation to the beneficiary. No sufficient documentary evidence was presented by the 6th Plaintiff to defend the root of their title.

173. The 10th Plaintiff Mr. Kenneth Gitere was also a purchaser. He purchased the land following an advertisement placed by Keysian Auctioneers on behalf of Bank of Baroda Ltd. That the sale was pursuant to the bank exercising its statutory power of sale.

174. In support of his case, he produced a copy of title. He explained that a copy of the transfer got burnt inside his pick-up when he was attacked in the impugned premises. The witness presented pictures of himself badly beaten and his burnt vehicle. That his vehicle was burnt at the premises when he went to take possession. He explained that the payments for purchase in the sum of Kshs.12million was done through the firm of HHM.

175. Taking into account the evidence presented by this witness, I hold the 1st, 3rd and 4th Defendants liable to compensate him for the amount of money spent to purchase the suit property through a public auction. The liability arises from the fact that the property was charged and the 4th defendant's predecessor did not warn the public.



176. Neither did the 1st – 3rd defendants take any steps to for warn the public against purchasing the land through caveat emptor. The fact of the auctioneer not giving any warranties does not exempt the Defendants now claiming the land not to compensate a person who has innocently suffered.
177. The 2nd and 5th Plaintiffs did make payments for their allotment letters and presented evidence to that effect. I would have granted them the reliefs sought in the event I had reached a finding that L.R 2952/R was unalienated government land.
178. Despite not granting them the land, it is my considered opinion that they are entitled to a refund for the sums of money paid to the government as per the receipts produced.
179. The 4th Plaintiff also did comply by paying for stand premiums after receipt of the allotment letter and also accepted the offer in writing. Mr. Nato Gitonga who gave evidence on behalf of the plaintiff did not participate in applying for the land or making any payments. The land was applied for by his father who is also a director of the plaintiff. His father Mr. James Kamwere is the one who in consultation, with the commissioner of lands initiated the subdivision of L.R 2952/R.
180. Thus, the 4th plaintiff through its director James Kamwere knew from the start that the land was not available for allocation yet he went ahead to undertake an illegal subdivision of the suit land. The 4th Plaintiff's claim fail for being party to the fraud in acquiring land reserved for public use by the then Ministry of Agriculture and Livestock.

Is the 2nd Defendant a trespasser?

181. My answer is in the negative based on the analysis and finding that the plaintiffs have not proved the land was available for allocation. The said Plaintiffs save for the 2nd, 4th and 5th Plaintiffs did not comply with the terms of allocation. The cases cited by the plaintiffs in their submissions discussing what is trespass and rights of a registered owner of land would only apply if the plaintiffs justified their titles.
182. The plaintiffs argued that the state must use due process to recover illegally acquired (the case of Evelyn College of Design Ltd vs Director of Chidren's Department & Another (2013) eKLR). Again, none of the other plaintiffs had taken physical occupation of the suit land. Therefore, their dispossession was done administratively by revoking the titles through a gazette notice
183. The Plaintiffs went ahead and challenged the gazette notice number 16351 through the judicial proceedings. That process was already determined in the judicial review proceedings they took out so I shall not delve into its illegality or otherwise.

Reliefs Sought:

184. Can the court grant the orders sought in the Counter claim in light of the foregoing analysis? The court having found that the titles of the 1st -9th and 11th to 13th Plaintiffs were not regularly acquired, I hold that the orders sought in prayers (a), (b), (c), (e), (f) are not available to them. The said prayers are dismissed. I hold that the 10th Plaintiff is entitled to damages equivalent to the amount of money he paid as purchase price of Kshs 12,000,000 against the Defendants jointly and severally. The same shall attract interest at court rates from the date of this judgement until payment is made in full.
185. Under prayer (d), the Plaintiffs sought for compensation. It is under this relief that I make an order that the Plaintiffs who paid for the stand premiums and or monies paid the predecessor of the 4th Defendant. They are entitled to the refund from the 1st and 4th Defendants because there is no basis why the 4th Defendant received these moneys for payment of land that was not available. It is unconscionable for them to keep the land also keep the monies from the said Plaintiffs.



186. These monies will be refunded with interest at court rate from the date of filing of this suit. The amounts refundable to the Plaintiffs who produced receipts are as itemized below:

1. The 2nd Plaintiff----- Kshs 311,950=
2. The 4th Plaintiff-----Kshs 335,334
3. The 5th Plaintiff ----- Kshs 297,020
4. The 6th Plaintiff ----- Kshs 307,784
5. The 9th Plaintiff -----Kshs 54,834
6. The 11th Plaintiff -----Kshs 91,108

187. I also hold that the prayers (ii) – (iv) of the counter-claim is merited and the same are allowed as prayed. Although the counter-claim has succeeded, I award no costs because the counter-claimant through their office allowed the illegality to take place.

188. Since this matter has succeeded only on two reliefs in the Plaintiffs claim, I shall award the Plaintiffs half costs of the suit against the Defendants jointly and severally.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 10TH DAY OF JULY, 2025

A. OMOLLO

JUDGE

