



Pius & 2 others (Suing on for and on behalf of Twenty-Eight Members of Barechu Self Help Group) v China State Construction Engineering Corporation (Kenya) Limited & 2 others; County Government of Isiolo (Interested Party) (Environment and Land Case E001 of 2023) [2025] KEELC 5165 (KLR) (3 July 2025) (Judgment)

Neutral citation: [2025] KEELC 5165 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ISIOLO
ENVIRONMENT AND LAND CASE E001 OF 2023**

**JO MBOYA, J
JULY 3, 2025**

BETWEEN

**KAMAIS PIUS 1ST PLAINTIFF
GUYO WAKO 2ND PLAINTIFF
SHINDA BORU 3RD PLAINTIFF
SUING ON FOR AND ON BEHALF OF TWENTY-EIGHT MEMBERS OF
BARECHU SELF HELP GROUP**

AND

**CHINA STATE CONSTRUCTION ENGINEERING CORPORATION (KENYA)
LIMITED 1ST DEFENDANT
KENYA NATIONAL HIGHWAYS AUTHORITY 2ND DEFENDANT
HUSSEIN ABDI & DAUDI TANO (SUING FOR AND ON BEHALF OF
MEMBERS OF HURR SELF HELP GROUP) 3RD DEFENDANT**

AND

COUNTY GOVERNMENT OF ISIOLO INTERESTED PARTY

JUDGMENT

1. The Plaintiffs have brought the suit beforehand on behalf of Barechu Self Help Group vide Plaint dated 17th April 2023; and wherein same have sought the following reliefs;
 - i. A permanent injunction restraining the 1st and 2nd Defendants by themselves, their servants, agents, contractors, employees, officials, proxies and any other person claiming any right under



it from entering, remaining on, fencing off, constructing structures, clearing, or in any way interfering with the suit property.

- ii. In the alternative, the 2nd Defendant does offer compensation to Barechu Self Help Group for use of the suit property.
 - iii. Costs of the suit and interest thereon at court rates.
 - iv. Any other order as this honourable court may deem just and fit to grant.
2. The 1st Defendant duly entered an appearance and thereafter filed a statement of defence dated 9th October 2023. The 1st Defendant denied the claims at the foot of the Plaint. Furthermore, the 1st Defendant contended that the suit property which is being claimed by the Plaintiffs herein, comprises of community land which was leased unto the 1st Defendant by the Garba Tula Community, albeit through the County Government of Isiolo. To this end, the 1st Defendant has referenced the agreement entered into on 23rd November 2022.
3. The 2nd Defendant duly entered an appearance and filed a statement of defence and which statement of defence was thereafter amended, culminating into an amended statement of defence dated 17th January 2025. Instructively, the 2nd Defendant has denied the claims at the foot of the plaint. Furthermore, the 2nd Defendant has contended that the Plaintiffs herein have no locus standi to mount, maintain, and or prosecute the suit beforehand. In this regard, the 2nd Defendant has invited the court to find and hold that the Plaintiffs are non-suited.
4. The 3rd Defendant duly entered appearance on 3rd October 2023 and thereafter filed a statement of defence and counterclaim dated 31st October 2023. Vide the counterclaim under reference, the 3rd Defendant has sought the following reliefs;
- I. A declaration that Plot Number 385 Garba Tula belongs to the Plaintiff.
 - II. An Eviction Order directed to the 1st Defendant ordering them their agents, servants or anyone acting on their behalf to forthwith vacate their plot Number 385 Garba Tula.
 - III. An Order of Permanent Injunction restraining the Defendant jointly and or severally whether by themselves, their agents, servants or anyone acting on their behalf from entering, remaining on, quarrying, utilising, fencing, alienating, selling or in any other way interfering with the Plaintiff's Plot Number 385 Garba Tula.
 - IV. Mesne Profits and Damages for Trespassing.
 - V. Cost of the Suit.
 - VI. Interest on (IV) and (V) at Court Rates.
 - VII. Any other Relief that this Court deems just and fit to grant.
5. The Interested Party sought and obtained leave to be enjoined in the instant suit. Thereafter, the interested party filed a statement of defence dated 13th October 2023; and wherein the Interested Party averred that the suit plot constitutes part of community land. Moreover, the Interested Party posited that the said community land was the subject of an agreement between the County Government of Isiolo and the 1st Defendant, albeit on behalf of the Garba Tula Community.
6. To this end, the Interested Party has referenced the agreement dated 2nd November 2022, which essentially allowed the 1st Defendant to enter upon and take possession of the suit plot.



7. Furthermore, the suit property was contended to lawfully belong to the community and thus the claim by the Plaintiffs is untenable.
8. The instant matter came up for case conference on 20th January 2025, whereupon the advocates for the parties confirmed that same had filed and exchanged all the requisite list and bundle of documents, list of witnesses, and witness statements. To this end, the parties covenanted that the suit was therefore ready for hearing. Consequently, the matter was confirmed as ready for hearing.
9. The Plaintiffs' case is premised on the evidence of one [1] witness, namely; Kamais Pius. Same testified as PW1.
10. It was the testimony of the witness that same is the 1st Plaintiff herein. Furthermore, the witness averred that same is conversant with the group known as Barechu Self-help Group. Moreover, the witness averred that the group in question comprises 28 members.
11. It was the further testimony of the witness that same is conversant with the facts of this case. In addition, the witness testified that same has since recorded and filed a witness statement dated 17th April 2023. To this end, the witness sought to adopt and rely on the contents of the witness statement. Instructively, the witness statement was duly adopted and constituted as the evidence in chief of the witness.
12. The witness further alluded to a list and bundle of documents dated 17th April 2023, containing six [6] documents. The witness thereafter sought to produce the various documents as exhibits before the court. There being no objection to the production of the documents, same were produced and admitted as exhibits P1-P6 respectively.
13. It was the further testimony of the witness that same has also filed a further list and bundle of documents. To this end, the witness referenced the list and bundle of documents dated 17th January 2025, containing six [6] documents. Instructively, the witness sought to tender and produce the documents as exhibits before the court. There being no objection to the production of the said documents, same were tendered and admitted as exhibits P7-P12, respectively.
14. Additionally, the witness referenced the Plaintiff dated 17th April 2023 as well as the verifying affidavit sworn on the even date and thereafter, same sought to adopt and rely on the contents of the Plaintiff under reference. Furthermore, the witness implored the court to grant the reliefs at the foot of the Plaintiff.
15. On cross-examination by learned counsel for the 1st Defendant, the witness testified that same has since filed a witness statement. Moreover, the witness averred that the witness statement is dated 17th April 2023. In addition, the witness testified that the witness statement captures [adverts] the material particulars of the claim made on behalf of the Plaintiffs.
16. While still under cross-examination, the witness testified that same has also sworn a verifying affidavit. In addition, the witness testified that the verifying affidavit has not been signed. For clarity, the witness conceded that the verifying affidavit does not have the signature of the deponent.
17. It was the further testimony of the witness that same has stated that he is the chairperson of the group. Furthermore, the witness averred that same has also been granted the authority to represent the group. Nevertheless, the witness averred that the authority under reference has not been filed before the court.
18. Additionally, the witness testified that the self-help group was duly registered. The witness averred that the self-help group was issued with a certificate of registration dated 12th April 2023. In any event, the witness testified that the self-help group was registered prior to the filing of the suit.



19. It was the further testimony of the witness that the self-help group was allocated the plot by the County Government of Isiolo [now defunct]. However, the witness conceded that same has not tendered or produced any document to show allotment of the Plot from the County Government of Isiolo.
20. While still under cross-examination, the witness testified that upon allocation of the suit property, the Plaintiffs entered upon and took possession thereof. Furthermore, the witness averred that it is the Plaintiffs who are in occupation and possession of the suit property. Besides, the witness testified that the Plaintiffs have sunk a borehole on the suit property. Nevertheless, the witness conceded that same had not brought any evidence to show the existence of a borehole.
21. It was the further testimony of the witness that the 1st Defendant approached the plaintiffs with a view to using the suit property. However, the witness averred that same does not have any evidence to confirm that the 1st Defendant approached the Plaintiffs with a view to using the suit property.
22. Moreover, the witness testified that the 1st Defendant equally offered to compensate the Plaintiffs. Nevertheless, the witness admitted that same do not have any evidence to confirm that the 1st Defendant agreed to compensate the Plaintiffs.
23. While under further cross-examination, the witness averred that same has tendered and produced before the court evidence of a part development plan. Besides, the witness testified that the part development plan was issued by the County Government of Isiolo.
24. On cross-examination by learned counsel for the 2nd Defendant, the witness averred that same has tendered and produced before the court a copy of the part development plan. The witness averred that the part development plan was duly approved by the national government.
25. It was the further testimony of the witness that the Plaintiffs have sunk a borehole on the suit property. Nevertheless, the witness conceded that same has not produced any evidence to demonstrate the existence of such a borehole.
26. Additionally, the witness averred that even though same has contended that suit property belongs to the plaintiffs, same has not produced any document to prove such ownership.
27. It was the further testimony of the witness that the part development plan which same has produced before the court does not have any stamp from the Ministry of Lands, Physical Planning, and Housing.
28. On cross-examination by the learned counsel for the 3rd Defendant, the witness averred that the Plaintiffs were allocated the suit property by the chief of the area. Furthermore, the witness added that it is the chief who authorised the allocation. Nevertheless, the witness averred that same does not have any application to the Ministry of Lands.
29. While still under cross-examination, the witness testified that same has tendered and produced a copy of the application for the part development plan.
30. On re-examination by learned counsel for the plaintiffs, the witness averred that the plaintiffs herein have not been issued with a certificate of title over the suit property. Furthermore, the witness testified that no such certificate of title has been produced before the court.
31. Regarding the issue of authority to represent the group, the witness testified that same was duly authorised by the group. Nevertheless, it was testimony of the witness that same has not filed the authority before the court.
32. It was the further testimony of the witness that the land in question was surveyed. However, the witness admitted that same has not availed a copy of the survey report before the court.



33. With the foregoing testimony, the Plaintiffs' case was closed.
34. The 1st Defendant's case is premised on evidence of one [1] witness, namely, Isaac Doti Garbiti. Same testified as DW1.
35. It was the testimony of the witness that same is a community liaison officer over all the Project from Kula Mawe to Modogashe. To this end, the witness averred that same is therefore knowledgeable of and conversant with the facts of this case.
36. It was the further testimony of the witness that same has since recorded and filed a witness statement dated 27th January 2025. In this regard, the witness sought to adopt and rely on the witness statement as his evidence in chief. Instructively, the witness statement was duly adopted and constituted as the evidence in chief of the witness.
37. Additionally, the witness referenced the list and bundle of documents dated 9th October 2023, containing five [5] documents and thereafter same sought to tender and produce the documents as exhibits before the court. There being no objection to the production of the documents, same were produced and admitted as exhibits D1-D5, on behalf of the 1st Defendant.
38. Moreover, the witness confirmed that the 1st Defendant filed an amended statement of defence dated 19th January 2025 and thereafter sought to adopt and rely on the said amended statement of defence.
39. On cross-examination by learned counsel for the 2nd Defendant, the witness averred that the 1st Defendant was contracted by the 2nd Defendant. Nevertheless, the witness added that the 1st Defendant is an independent contractor and not an agent of the 2nd Defendant.
40. While still under cross-examination, the witness averred that the 1st Defendant had the obligation of acquiring materials for the construction of the road by itself. Furthermore, the witness averred that the 1st Defendant was obliged to comply with and adhere to the Laws of the Republic of Kenya as they pertain to the acquisition of materials. Besides, the witness testified that it was the duty of the 1st Defendant to acquire land for the purposes of the extraction of materials.
41. The witness further averred that the 1st Defendant indeed acquired land for the purposes of the extraction of materials. Moreover, the witness stated that the 1st Defendant also facilitated the environmental assessment by NEMA.
42. On cross-examination by learned counsel for the 3rd Defendant, the witness averred that the 1st Defendant acquired the land in question. Furthermore, the witness added that the land was surveyed. Nevertheless, the witness conceded that same has not tendered a copy of the survey report before the court.
43. While still under cross-examination, the witness testified that the land in question is community land. However, the witness averred that despite being community land, same has not been registered.
44. Upon being referred to exhibit D4, the witness averred that the said exhibit are the minutes that were made during the meeting leading to the leasing of the land on behalf of the community.
45. On cross-examination by learned counsel for the Plaintiffs, the witness testified that the land in question is community land. Nevertheless, the witness further reiterated that the land has not been registered.



46. On re-examination, the witness averred that the 1st Defendant entered into a temporary lease agreement/relationship with the Garba Tula community. For good measure, the witness averred that the agreement was reduced into writing.
47. Additionally, the witness testified that the County Government of Isiolo was involved in the lease arrangement/agreement between the 1st Defendant and the Garba Tula Community.
48. With the foregoing testimony, the 1st Defendant's case was closed.
49. The 2nd Defendant's case is premised on the evidence of one [1] witness, namely, Milkah Muendo. Same testified as DW2.
50. It was the testimony of the witness that same is a surveyor by profession. In addition, the witness averred that same is currently employed by Kenya National Highways Authority [KENHA].
51. Moreover, the witness averred that in respect of the instant matter, same has since recorded a witness statement. To this end, the witness referenced the statement dated 21st January 2025 and thereafter sought to adopt and rely on same as her evidence in chief. Suffice it to state that the witness statement was duly constituted as the evidence in chief of the witness.
52. Other than the foregoing, the witness referenced the list and bundle of documents dated 21st January 2025, containing four documents and which the witness sought to tender and produce before the court. There being no objection to the production of documents, same [documents] were duly admitted and constituted as exhibits D1-D4 on behalf of the 2nd Defendant.
53. On cross-examination by learned counsel for the 1st Defendant, the witness averred that the 1st Defendant is an independent contractor. Furthermore, the witness testified that the local community is the one that gave the land in question to the 1st Defendant. In any event, the witness added that the community was duly compensated. In particular, the witness testified that the community was compensated by the 1st Defendant, who constructed a social hall and erected a perimeter wall fence for Garba Tula High School.
54. On cross-examination by the learned counsel for the 3rd Defendant, the witness averred that the 1st Defendant undertook due diligence prior to and before entering into the lease arrangement with the community. Furthermore, the witness averred that the 1st Defendant also engaged the County Government of Isiolo. To this end, the witness alluded to various correspondences to that effect.
55. While still under cross-examination, the witness testified that the land in question forms part of the community land. Nevertheless, it was testimony of the witness that though the land is a community land, same has not been registered.
56. It was the further testimony of the witness that the land in question is held on trust by the County Government of Isiolo. In this regard, the witness clarified that the County Government of Isiolo was involved in the arrangement[s] leading to the lease of the suit property in Favor of the 1st Defendant.
57. On cross-examination by learned counsel for the Plaintiffs, the witness averred that same is not aware whether the Garba Tulla Community is a registered community under the [Community Land Act](#) 2016. Nevertheless, the witness testified that same has not tendered any document that the said community is duly registered.
58. On re-examination, the witness testified that where the community land is unregistered, there would be no records held by the community land registrar. Nevertheless, the witness added that the 1st Defendant engaged the community and minutes confirming such engagements have been produced before the



- court. Furthermore, the witness testified that the Deputy County Commissioner was also privy to the minutes attesting to the engagements between the 1st Defendant and the local community.
59. With the foregoing testimony, the 2nd Defendant's case was closed.
60. The 3rd Defendant's case is premised on the evidence of one [1] witness, namely, Hussein Abdi. Same testified as DW3.
61. It was the testimony of the witness that same is conversant with the facts of the instant matter. To this end, the witness stated that same has since recorded and filed a witness statement. Moreover, the witness proceeded to and adopted the witness statement dated 31st October 2023. Suffice it to state that the witness statement was duly adopted and constituted as the evidence in chief of the witness.
62. Additionally, the witness referenced the list and bundle of documents dated 31st October 2023, containing nine [9] documents and thereafter same sought to tender and produce the documents as exhibits before the court. There being no objection to the production of documents, same were produced and marked as exhibits D1-D9 on behalf of the 3rd Defendant.
63. Furthermore, the witness also referenced the list and bundle of documents dated 17th April 2024 and thereafter sought to produce them before the court. Suffice it to state that the document[s] was produced and marked as Exhibit D10 on behalf of the 3rd Defendant.
64. On the other hand, the witness averred that the 3rd Defendant filed a statement of defence and counterclaim. To this end, the witness referenced the statement of defence/ Counter-claim dated 1st October 2023 and thereafter sought to adopt and rely on the contents thereon.
65. Furthermore, the witness adverted to a verifying affidavit sworn on 3rd March 2025 and thereafter sought to adopt and rely on the contents of the said verifying affidavit. Suffice it to state that though the verifying affidavit was filed contrary to the provisions of Order IV Rule 1[Subrule 2 of the CPR] the advocates for the parties entered into a consent and the verifying affidavit was adopted as part of the counterclaim.
66. On cross-examination by learned counsel for the 1st Defendant, the witness averred that the 3rd Defendant was duly allocated the land. To this end, the witness testified that the 3rd Defendant complied with the Procedure/Process for allocation of land. For good measure, the witness testified that the 3rd Defendant was duly issued with a letter of allotment. Nevertheless, the witness testified that the 3rd Defendant has not been issued with a certificate of lease.
67. While still under cross-examination, the witness added that the 3rd Defendant is in the process of obtaining the certificate of title.
68. It was the further testimony of the witness that same applied for part development plan [PDP] in 1997. Furthermore, the witness averred that the part development plan has been availed to the court. Nevertheless, the witness added that the part development plan was issued in 2017.
69. While still under cross-examination, the witness testified that two companies had trespassed on their land. In particular, the witness averred that the Defendants herein have trespassed onto the land.
70. On further cross-examination, the witness further testified that same is aware of the process pertaining to the issuance of a part development plan. Nevertheless, the witness testified that the part development plan was not gazetted.



71. On cross-examination by learned counsel for the 2nd Defendant, the witness testified that same has been authorised to attend court and testify on behalf of the 3rd Defendant. Furthermore, the witness averred that the authority had been filed before the court.
72. While still under cross-examination, the witness testified that same is not conversant with the Land belonging to the Plaintiff. Nevertheless, the witness stated that the land in contention is Plot Number 377.
73. Moreover, the witness testified that same was issued with a part development plan and a letter of allotment. Furthermore, the witness testified that same has tendered and produced before the court a copy of the letter of allotment. Nevertheless, the witness conceded that same has not tendered any evidence to show payments of the stand premiums and the statutory levies indicated at the foot of the letter of allotment.
74. Moreover, the witness testified that even though same has averred that the land belongs to the 3rd Defendant, same has, however, availed minutes which have not been signed. In any event, the witness added that same has also produced a letter from the Chief Officer- Lands, but the letter does not have a stamp of the County Government of Isiolo.
75. While still under cross-examination, the witness testified that the organization that is represented by himself has a constitution. However, the witness acknowledged that same has not produced a copy of the constitution before the court.
76. On cross-examination by learned counsel for the Plaintiffs, the witness averred that the plot number being claimed by the 3rd Defendant is Plot number 385. Nevertheless, the witness acknowledged that same has no documents to demonstrate that Plot Number 385 has any relationship with Plot Number 377.
77. On re-examination, the witness averred that the Plot under reference was allocated to the 3rd Defendant by the County Government of Isiolo. Furthermore, the witness testified that same has tendered and produced a copy of the letter of allotment before the court.
78. On further re-examination, the witness testified that the 3rd Defendant procured and obtained the part development plan [PDP] in 2017. In any event, the witness added that same has produced evidence of ownership of the land in question. Be that as it may, the witness conceded that same has not produced a certificate of lease.
79. While still under re-examination, the witness averred that the 3rd Defendant is owner of Plot Number 385. Furthermore, the witness testified that Plot Number 385 is on the same ground/location which is occupied by the 1st and 2nd Defendants.
80. Finally, the witness stated that same has availed minutes before the court. However, the witness acknowledged that the minutes under reference have not been signed.
81. With the foregoing testimony, the 3rd Defendant's case was closed.
82. Upon the close of the hearing, the advocates for the respective parties sought time to file and exchange written submissions. To this end, the court ventured forward and circumscribed timelines for the filing and exchange of written submissions.
83. The Plaintiffs proceeded to and filed written submissions dated 22nd April 2025; the 1st Defendant filed written submissions dated 23rd May 2025; the 2nd Defendant filed written submissions dated 23rd May 2025; the 3rd Defendant filed written submissions dated 3rd June 2025, whereas the interested party filed



written submissions dated 3rd April 2025. The various sets of submissions form part of the record of the court. Furthermore, I have reviewed the contents of the submissions which essentially gravitate on two key issues, namely, whether the plaintiffs have proved ownership of the suit property or otherwise and whether the 3rd Defendant is the lawful owner of Plot Number 385 or otherwise.

84. Having reviewed the pleadings filed by and on behalf of the respective parties; having taken into account the evidence tendered [both oral and documentary] and upon consideration of the written submissions filed by the Respective parties, I come to conclusion that the determination of the subject dispute turns on two [2] key issues, namely, whether the Plaintiffs have established and proved ownership rights in respect of [sic] plot number 377 or otherwise; and whether the 3rd Defendant has proved ownership rights over [sic] plot number 385 or otherwise.
85. Regarding the first issue, namely; whether the Plaintiffs have established and proved ownership rights in respect of [sic] plot number 377 or otherwise, it is imperative to recall and reiterate that it is the Plaintiffs herein who filed the instant suit contending that same [Plaintiffs] are the registered owner of all that parcel of land known as Plot Number GARBA TULA 377 [the suit property].
86. Additionally, the Plaintiffs herein posited that the suit property was duly allocated unto them vide Part Development Plan dated 25th August 2022 by the County Government of Isiolo. Moreover, the Plaintiffs posited that what comprises of the suit property is located approximately 2 KMS from the township and thus same [suit property] does not form part of the community land [See paragraphs 4 and 11 of the Plaint].
87. Having approached the court contending that the suit property was duly allocated unto them, it was incumbent upon the Plaintiffs to tender and produce before the court plausible, cogent, and credible evidence to demonstrate that the Plot was indeed allocated unto them.
88. To start with, the Plaintiffs herein contend that the suit property does not form part of the community land. To the extent that the plaintiffs averred that the suit plot does not form part of the community land, it then means that the suit plot or better still, what constitutes the suit plot, was previously public land falling within the jurisdiction of Isiolo County Government. If this is the correct position, then it was incumbent upon the Plaintiffs to tender and produce before the court a copy of the application letter addressed to the County Government of Isiolo seeking to be allocated the suit plot.
89. Additionally, there is no gainsaying that upon receipt of the application letter [if any], the county government of Isiolo would constitute the requisite committee presided over by the county executive member for lands, physical planning, and urban development to consider such application. Thereafter, the committee would be obliged to generate resolutions/ recommendations approving the application for allotment of land or otherwise.
90. It bears repeating that once the county government of Isiolo has deliberated on the application and generated recommendations, such recommendations would no doubt be escalated to the National Land Commission for purposes of issuance of a letter of allotment. For good measure, it is common ground that National Land Commission is the only body tasked with the mandate of administering and managing public land on behalf of the County and National governments [See Article 67(2) of *the Constitution*] [See section 5 of the *National Land Commission Act*] [See sections 9, 12, and 13 of the *Land Act* 2012].
91. Additionally, it is important to take cognizance of the holding of the Court of Appeal in the case of Cordison International (K) Limited v Chairman National Land Commission & 44 others [2019] KECA 830 (KLR) where the Court of Appeal discussed the legal meaning of administration and management of public land.



92. For coherence, the court stated thus

“ 30. Article 67 of *the Constitution* that establishes the National Land Commission gives it power to, inter alia, manage public land on behalf of the national and county governments. The suit land is public land as defined under Article 62(1) (a) of *the Constitution* and therefore vests in and is held by the County Government of Lamu in trust for the people resident in the County. Article 62 (2) of *the Constitution* provides that the land shall be administered on behalf of the County residents by the National Land Commission. Section 5 (1)(a) of the *National Land Commission Act* is also explicit that one of the functions of the National Land Commission is to manage public land on behalf of the national and county governments. Under section 5(2) of the Act the Commission may, “on behalf of, and with the consent of the national and county governments, alienate public land.”

31. Section 12 of the *Land Act* grants the Commission authority to allocate public land on behalf of the national or county governments and section 14 of the Act specifies the steps that the Commission ought to take before it undertakes any such allocation. The Commission has to issue, publish or send a notice of action to the public and interested parties, at least thirty days before offering for allocation a tract or tracts of land.”

93. Bearing in mind the ratio decidendi espoused in the decision [supra], it is common ground that anyone contending to have been allocated part of public land in the year 2022 must avail a copy of a letter of allotment issued by the National Land Commission.

94. Have the Plaintiffs tendered and or produced any such letter of allotment? Sadly, no such document was tendered and produced before the court. In the absence of the letter of allotment, the contention by the Plaintiffs to have been allocated [sic] the suit plots dissipates into thin air.

95. Furthermore, it is important to reiterate that even if the plaintiffs had tendered and produced a copy of the letter of allotment [which is not the case] such letter of allotment by and of itself would not have underpinned a claim of ownership of the property [See *Torino Enterprises Limited v Attorney General* (Petition 5 (E006) of 2022) [2023] KESC 79 (KLR) (22 September 2023) (Judgment) at Paragraphs 58 and 61 thereof].

96. Thirdly, the Plaintiff's case is anchored on a part development plan which is said to have been prepared on 16th March 2023. However, the said part development plan is incomplete and lacks the requisite stamp by the County Government of Isiolo. Further and in any event, there is a contradiction between the impugned part development plan dated 16th March 2023 and paragraph 4 of the Plaint. For good measure, paragraph 4 of the plaint adverts [sic] a part development plan dated 25th August 2022.

97. To my mind, a party, the Plaintiffs not exempted, cannot tender and produce evidence which it at variance with the pleadings. In such a situation, the evidence that is at variance with the pleadings goes towards proving no claim. Such evidence must be disregarded and ignored [see order II Rule 6 of the CPR 2010, which underpins the doctrine of departure.] [See also *Odinga & another v Independent Electoral and Boundaries Commission & 2 others; Aukot & another (Interested Parties); Attorney General & another (Amicus Curiae)* (Presidential Election Petition 1 of 2017) [2017] KESC 42 (KLR) (Election Petitions) (20 September 2017) (Judgment) (with dissent - JB Ojwang & NS Ndungu, SCJJ); *Independent Electoral and Boundaries Commission & another v Mule & 3 others* (Civil Appeal 219



of 2013) [2014] KECA 890 (KLR) (31 January 2014) (Judgment); and Dakianga Distributors (K) Ltd v Kenya Seed Company Limited [2015] eKLR].

98. Finally, it is also not lost on me that even though the Plaintiffs are purporting to have been allocated the plot vide part development plan dated 25th August 2022; the Self-help group [Barechu Self Help Group], which is represented by the plaintiffs herein, was only registered on 12th April 2023. The question that does arise is whether any allotment could have been issued prophetically before the self-help group was registered. Something is not adding up.
99. Before departing from this issue, it is also worth recalling that the plaintiffs purported that Barechu Self Help Group is the registered owner of the suit plot.
100. My humble understanding of the terminology deployed drives me to the conclusion that the Plaintiffs are positing that the self-help group has indeed been registered and issued with a certificate of title. Indeed, it is the issuance of a certificate of title or lease [whichever is applicable] that constitutes a person as a registered owner.
101. However, in respect of the instant matter, there is no gainsaying that no certificate of lease or title was ever tendered and produced before the court. If anything, PW1 conceded and admitted before the court that the Plaintiffs have not been issued with any ownership documents.
102. It was the Plaintiffs who brought the case and made the various averments. To this end, the Plaintiffs were chargeable with the burden of proving their claim. [See Sections 107, 108, and 109 of the *Evidence Act* Chapter 80 Laws of Kenya] [See also Daniel Toroitich Arap Moi vs Mwangi Stephen Mureithi (2014) eKLR; Odinga & another v Independent Electoral and Boundaries Commission & 2 others; Aukot & another (Interested Parties); Attorney General & another (Amicus Curiae) (Presidential Election Petition 1 of 2017) [2017] KESC 42 (KLR) (Election Petitions) (20 September 2017) (Judgment) (with dissent - JB Ojwang & NS Ndungu, SCJJ)- Paragraphs 132 and 133 thereof; and Dr. Samson Gwer & 5 others vs KEMRI [2020] EKLR- Paragraphs 49, 50, and 51 thereof].
103. I am afraid that the Plaintiffs have failed to discharge the burden of proof or at all. To this end, the plaintiffs' claim to be the owners of the suit property is not tenable in the eyes of the law.
104. Turning to the second issue, namely; whether the 3rd Defendant has established and or proven its claim to be the owner of [sic] Plot 385 or otherwise, it is important to underscore that the 3rd Defendant contends that same were allocated the suit property by the County Council of Isiolo [now defunct] vide minutes dated 6th August 1997. Thereafter, the 3rd Defendant has contended that same ventured forward and made an application to be issued with a part development plant. To this end, the 3rd Defendant posits that same has since acquired ownership rights to and in respect of Plot Number 385.
105. To start with, the minutes of the County Council of Isiolo [now defunct], which were tendered and produced before the court and which were being relied upon, did not have a signature page. Same was equally not signed. Furthermore, the minutes are evidently incomplete.
106. Moreover, it is also not lost on me that the purported minutes which underpin the claim on behalf of the 3rd Defendant have also not been certified in accordance with section 80 of the *Evidence Act*, Chapter 80 Laws of Kenya.
107. It is important to underscore that the mere production of a document as an exhibit does not by and of itself constitute proof of the document. In this case, the production of the impugned minutes does not denote that the minutes are lawful, legal, and valid.



108. Simply put, production of an exhibit is one thing, proof of the document and the probative value [if any] to be assigned to it is another thing. [See *Kenneth Nyaga Mwige vs Austine Kiguta* (2015) ECLR; See also *Finmax CBO Self Help Group vs Kericho Technical Institute* (2021) eCLR; *Bileah Mtiangi vs Kisii Bottlers Limited* (2021) eCLR, and *Kenya Railways Corporation & 2 others v Okoiti & 3 others* (Petition 13 & 18 (E019) of 2020 (Consolidated)) [2023] KESC 38 (CLR) (16 June 2023) (Judgment).]
109. In my humble view, the purported minutes of the County Council of Isiolo [now defunct] dated 5th August 1997 are invalid and cannot underpin [sic] allocation of land to the 3rd Defendant.
110. Other than the fact that the minutes under reference are invalid and incapable of underpinning the 3rd Defendant's claim, it is also important to highlight one more issue. The issue is that the organization, namely, Hurr Farmers Self Help Group, which is purported to have made an application for allotment of land underpinned by the questionable minutes, was registered on 4th June 1998.
111. Surely, the Plaintiffs and the 3rd Defendants are both taking the court on a joy ride.
112. The third perspective that is also important to highlight is that the 3rd Defendant has also purported to premise their claim on the basis of a letter of allotment dated 24th July 2018 and issued by the National Lands Commission.
113. However, there is no gainsaying that the impugned letter of allotment does not relate to or highlight Plot Number 385, which is being claimed by the Defendant. Furthermore, the letter of allotment references a part development plan number ISL/117/17/684, but the purported part development plan is neither dated nor approved. Yet again, I beg to state that the purported letter of allotment does not enhance the 3rd Defendant's stake in Plot Number 385.
114. Notwithstanding the foregoing, it is worth recalling that DW3, who testified on behalf of the 3rd Defendant, conceded before the court that same has not tendered or produced any evidence to confirm that the terms of the letter of allotment were met and, or complied with. In the absence of evidence of compliance with the conditions at the foot [sic] letter of allotment, there is no gainsaying that the letter of allotment lapsed and stood extinguished. [See *Torino Enterprises Limited v Attorney General* (Petition 5 (E006) of 2022) [2023] KESC 79 (CLR) (22 September 2023) (Judgment); and *Waterfront Holdings Limited v Kandie & 2 others* (Civil Appeal 88 of 2019) [2023] KECA 1223 (CLR) (6 October 2023) (Judgment)].
115. In my humble view, it was incumbent upon the 3rd Defendant to tender and produce before the court credible evidence to demonstrate its claim to [sic] Plot Number 385. It is not enough to simply throw omnibus and unsubstantiated allegations on the face of the court and thereby imagine that a court of law would return a favourable finding. Far from it.
116. Additionally, it is also important to underscore that parties must come to terms with the fact that same cannot walk into a court of law with questionable and unauthenticated documents and thereby expect to partake of justice. In my humble view, the time is ripe for parties and their legal counsels to re-internalize the import of section 80 of the [Evidence Act](#), Chapter 80, Laws of Kenya
117. I must have said enough to demonstrate that the 3rd Defendant has not proven its ownership rights to [sic] Plot Number 385 Garba Tulla.
118. Finally, I beg to reiterate that decisions of the court are premised on evidence tendered in accordance with Section 3 of the [Evidence Act](#). For good measure, court decisions are not based on sympathy,



empathy, or on the basis of some lottery. In this regard, it does not matter that the Plaintiff did not prove their case neither does it matter that the 3rd Defendant has also not proved their case.

119. The bottom line is that a decision must be made on the basis of evidence. No more and no less.

Final Disposition

120. Flowing from the discussion captured in the body of the Judgement, it must have become apparent, nay evident, that both the Plaintiffs on one hand and the 3rd Defendant on the other hand have not proved their respective cases.

121. In the premises, the final orders that commend themselves to the court are as hereunder;

- i. The Plaintiffs' case be and is hereby dismissed.
- ii. The 3rd Defendant's Counterclaim be and is hereby dismissed.
- iii. Costs of the Plaintiffs suit be and are hereby awarded to the Defendants and the Interested Parties.
- iv. Costs of the Counterclaim be and are hereby awarded to the Plaintiffs /1st Defendant.
- v. For avoidance of doubt and considering the Provisions of Section 13[7] of the Environment and Land Act 2011, the Suit Property or the Ground that Comprises of the Suit Property be and is hereby declared to be Community Land held on trust by the County Government of Isiolo in accordance of the Provisions of the Community Land Act, 2016.

122. It is so ordered.

DATED, SIGNED AND DELIVERED AT ISIOLO THIS 3RD DAY OF JULY 2025

OGUTTU MBOYA, FCI Arb; CPM [MTI-EA].

JUDGE

In the presence of:

Mutuma/Mukami – Court Assistant

Mr. Beyo and Mr. Mugo for the Plaintiffs

Ms. Muthoni for the 1st Defendant

Ms. Waithera Holding Brief for Ms. Nadi Boru for Interested Party

No Appearance for the 2nd Defendant

