



**Kimitei v Argut (Environment and Land Case 13 of 2023)
[2025] KEELC 6143 (KLR) (17 September 2025) (Judgment)**

Neutral citation: [2025] KEELC 6143 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KABARNET
ENVIRONMENT AND LAND CASE 13 OF 2023**

L WAITHAKA, J

SEPTEMBER 17, 2025

FORMERLY ELDORET ELC CASE NO.196 OF 2017 AND ITEN ELC CASE NO.55

BETWEEN

VERONICAH KIMOI KIMITEI PLAINTIFF

AND

FRANCIS KOSGEI ARGUT DEFENDANT

JUDGMENT

1. By a plaint dated 12th May, 2017 the plaintiff instituted the instant suit seeking judgment against the defendant for:-
 - a. An injunction to restrain the defendant whether by himself, his servants and/or agents from trespassing, interfering with, alienating, obstructing the carrying out of developments, destroying property or carrying out any acts inconsistent with the plaintiffs user of land parcel known as karbanet township/177 (hereafter known as the suit property) perpetually;
 - b. A mandatory injunction to compel the defendant to remove the fence and any barriers erected on the suit property;
 - c. Mesne profits and damages for trespass to the suit property;
 - d. Costs and interest;
 - e) Any other relief the court may deem fit to grant.
2. The plaintiff's suit is premised on the grounds that she is the registered proprietor of the suit property; that on 15th March 2017, the defendant without any justification trespassed into the suit property thereby interfering with her rights to the suit property.



3. It is the plaintiff's pleaded case that she acquired the suit property through a letter of allotment dated 19th May, 1995 issued to her by the Commissioner of lands; that she complied with the conditions contained in the letter of offer leading to issuance of a lease to her and registration of a certificate of lease in her favour.
4. Upon being served with summons to enter appearance and the suit papers, the defendant filed a statement of defence, dated 16th July 2018, in which he avers/contends that his father, Philemon Kosgei Argut, is the owner of the suit property; that his father was issued with a letter of allotment in respect of the suit property on 19th May 1995; that his father accepted the terms and conditions contained in the letter of allotment and took possession of the suit property; that he had been in continuous occupation of the suit property until 2nd March, 2018 when Silas Mulwo alias Tionybei invaded it.
5. The defendant contends that the plaintiff acquired title to the suit property fraudulently by;
 - a. Preparing and presenting forged allotment letter dated 19th May, 1995
 - b. Causing the title to be registered in her name without the consent or knowledge of the defendant
 - c. Misrepresenting to the District Land Registrar that she is the lawful allottee of the title knowing that the plaintiff is the legal allottee.
6. In his counterclaim, the defendant seeks judgment against the plaintiff for:-
 - a. Permanent injunction restraining the plaintiff or her agents from trespassing, selling and alienating the suit property;
 - b. An order cancelling the suit property registered in favour of the plaintiff;
 - c. An order compelling the District Land Registrar baringo to register the suit property in favour of Francis Kosgei as the administrator of the estate of Philemon Argut Kosgei;
 - d. In the alternative Francis Kosgei as administrator of the estate of Philemon Argut Kosgei be declared to have become the true owner of the suit property by adverse possession for over 12 years having occupied it since 1995;
 - e. Costs of the suit;
 - f. Such other relief as the court may deem fit.
7. When the case came up for hearing, through the evidence adduced by the parties, it emerged that the suit property was allocated to both the plaintiff and the defendant's father. The allotment was done vide letters of allotment dated 19th May, 1995. Other than the reference numbers of the letters of allotments, the contents of the letters of allotment are similar.
8. In the letters of allotment the suit property was described as R/B/328/97/7.
9. The allottees were supposed to communicate their acceptance of the offer and pay the amounts indicated therein within thirty days of the date indicated in the offer.
10. The evidence adduced in the lower court indicated that none of the allottees accepted the offer within the time indicated in the letter of allotment. The defendant's father accepted the offer and made payments in respect on 27th June 1995, 8 days after the time within which he ought to have accepted the offer and made payment in respect thereof had lapsed.



11. On her part, the plaintiff purportedly accepted the offer and made payment in respect thereof on or about 5th July 2016, about 21 years after the time within which she ought to have accepted the offer and made payment in respect thereof had lapsed.
12. It was a term of the letters of offer issued to the plaintiff and the defendant's father that if acceptance and payment was not communicated within the time intimated in the letter of allotment, the offer would be deemed to have lapsed.
13. Despite the plaintiff and the defendant's father having accepted the letters of offer issued to them after the time they were supposed to accept the offer and make payment in respect thereof, the payment were accepted and other processes geared towards effectuating the offer began.
14. Whilst the letter of allotment issued to the defendant did not lead to preparation and issuance of a lease in favour of the defendant's father and/or the administrator of his estate, the allotment issued in favour of the plaintiff culminated in issuance of a lease and registration of a certificate of lease in favour of the plaintiff in respect of the suit property.
15. According to Omollo Patrick (DW6), an Assistant Director Land Administration at the Ministry of Lands, Physical Planning and Urban Planning (Headquarters), there is nothing unusual with the acceptance of the offer even after the time within which acceptance ought to have been made had lapsed.
16. The dispute before this court being in respect of a case of double allocation of the suit property, the question this court is called upon to determine is whether the defendant having been the first in time to accept the suit property acquired any legally protectable rights in the suit property capable of defeating the plaintiff, now with superior rights over it by virtue of being the registered proprietor thereof.
17. Under Section 26 of the *Land Registration Act, 2025*, on account of the plaintiff's registration as the proprietor of the suit property, this court is obligated to consider her as the prima facie owner of the suit property.
18. The title held by the plaintiff enjoys legal protection unless it can be demonstrated that it was acquired fraudulently, or through misrepresentation to which the plaintiff is proved to be a party or if the certificate of title was acquired illegally, unprocedurally or through a corrupt scheme. In that regard see the said Section of the law which provides as follows:-

“The certificate of title issued by the Registrar upon registration,shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner...and that proprietor shall not be subject to challenge, except-
 - a. On the ground of fraud or misrepresentation to which the person is proved to be a party; or
 - b. Where the certificate of title has been acquired illegally, unprocedurally or through corrupt scheme.”
19. In the circumstances of this case, the plaintiff's certificate of title is traceable to the letter of allotment issued to her by the Commissioner of Lands on 19th May, 1995. It is not in dispute that the plaintiff did not accept the offer contained in the letter of allotment within the time indicated in the letter of allotment issued to her and/or within a reasonable time. Consequently, the offer lapsed.



20. The question that begs for an answer is whether there was an offer capable of being accepted by the plaintiff, 21 years later, that could form the basis of the purported acceptance and payment made by the plaintiff.
21. My respectful answer to that question is that there was none. In arriving at that conclusion, I am guided by the decision of the Supreme Court in the case of *Torino Enterprises Limited v Attorney General* (Petition 5 (E006 of 2022)(2023) KESC 79 (KLR) (22 September 2023) (Judgment) where the court stated/held:-

“...The respondent also challenged the letter of allotment on grounds that at the time of its transfer, the conditional thirty (30) days acceptance period had lapsed.The appellant’s ownership is traced to this allotment letter even if subsequently registered under the Registration of Titles Act... An allottee, in whose name the allotment letter is issued, must perfect the same by fulfilling the conditions therein. These conditions include but are not limited to, the payment of a stand premium and ground rent within prescribed timelines.....”
22. Whilst the practice of the Commissioner of Lands of accepting payment after the time indicated in the letter of allotment may, in appropriate circumstances, be taken as implied extension of the time within which acceptance and payment ought to be done, where there is inordinate delay in accepting the offer as happened in the plaintiff’s situation, it would be unreasonable and absurd to hold that the offer was still valid and capable of being accepted by the allottee, on the same terms and conditions.
23. This court is aware that the value of land appreciates over time. In that regard, a property valued at Kshs.7000/= 21 years ago for purposes of Stand Premium, would not return the same value of Stand Premium 21 years later. I also note from the letter of allotment, that the rent payable in respect of the suit property in 1995 was Kshs.820/=. Would the same rent be payable 21 years later, or the allottee would be required to pay accrued rent in accordance with the terms of the letter of offer? My view is that there was change of circumstances that required issuance of a fresh letter of offer to the plaintiff. The plaintiff could not and cannot rely on the offer issued to her 21 years before, which offer she paid to accept and make payment in respect thereof in reasonable time.
24. The evidence adduced in this case shows that the defendant’s father accepted the offer issued to him and made the requisite payment in respect thereof, albeit outside the time indicated in the letter of offer.
25. I have considered the submissions of the defendant on the delay and I am satisfied that the delay of 8 days in making acceptance to the offer and making payment in respect thereof was not so inordinate to form a basis of invalidation of the otherwise accepted acceptance of offer and payment made in respect thereof by the Commissioner of Lands.
26. The evidence adduced also shows that the defendant assumed possession of the suit property on account of his contractual arrangement with the Commissioner of Lands. That being the case, his occupation and possession of the suit property cannot be said to be unlawful and/or without any justifiable cause.
27. The upshot of the foregoing is that I find and hold that the letter of allotment relied on by the plaintiff as the basis of her acquisition of the suit property cannot form the basis of the lease and the certificate of lease issued in her favour. If the Ministry of Lands has a practice of accepting letters of allotments that have lapsed, as suggested by the DW6, that practices does not find support in law, particularly the law as interpreted by our courts.
28. A rising from the foregoing determination, I find the plaintiff’s suit to be lacking in merits and I dismiss it with costs to the defendant.



29. Having found the delay of 8 days by the defendant's father not so inordinate as to be prejudicial to the public in that the terms indicated in the letter of offer had not fundamentally changed, in the special circumstances of this case, I am inclined to find that the defendant has demonstrated that his father acquired his interest to the suit property through allocation of the same by the Commissioner Lands. For undisclosed reasons, no lease was prepared in favour of the defendant's father and a certificate of lease issued in his favour.
30. In view of the foregoing, I find and hold that the defendant has made up a case for being granted the orders sought in his counterclaim, which I hereby grant him in terms of prayers (a), (b), (c) and (e).
31. Orders accordingly.

**JUDGMENT READ, SIGNED, DATED AND DELIVERED VIRTUALLY AT KABARNET THIS
17TH DAY OF SEPTEMBER, 2025**

L. N. WAITHAKA

JUDGE

Judgment delivered virtually in the presence of:-

Mr. Mogambi for the plaintiff.

Mr. Francis Argut Defendant

Court Assistant; Ian

