



**Terrazzo Enterprises Limited v Mbugua (Environment and Land Case Civil  
Suit 197 of 2017) [2024] KEELC 4997 (KLR) (1 July 2024) (Judgment)**

Neutral citation: [2024] KEELC 4997 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND CASE CIVIL SUIT 197 OF 2017**

**JA MOGENI, J**

**JULY 1, 2024**

**BETWEEN**

**TERRAZZO ENTERPRISES LIMITED ..... PLAINTIFF**

**AND**

**HELENA NJERI MBUGUA ..... DEFENDANT**

**JUDGMENT**

1. Vide Plaintiff dated 09/02/2017 filed on 23/03/2017, the Plaintiff herein has sought for the following reliefs:
  - a. A declaration that the Defendant's purported acquisition of LR No. 209/7260/61 was procured or obtained fraudulently and the same is illegal, null and void.
  - b. A declaration that the Plaintiff is entitled to the exclusive and unimpeded right of possession and occupation of the LR No. 209/7260/61.
  - c. A declaration that the Defendant, whether by herself or her servants or agents or otherwise howsoever, are wrongfully in occupation of LR No. 209/7260/61 and are accordingly, trespassers on the same.
  - d. A declaration that the Defendant, whether by herself or her servants or agents or otherwise howsoever, are not entitled to remain on LR No. 209/7260/61.
  - e. A permanent injunction restraining the Defendant, whether by herself or her servants or agents or otherwise howsoever, from remaining on or continuing to occupy LR No. 209/7260/61.
  - f. Vacant possession of the LR No. 209/7260/61.
  - g. The Defendant be and is hereby directed to vacate the suit Property forthwith, failing which she shall be forcibly evicted therefrom.



- h. The OCS Pangani Police Station and or any other officer in charge of Administration Police of Nairobi, Eastleigh Sub County, or any officer acting under them be and are hereby ordered to implement, enforce and or supervise the implementation and or enforcement of the forceful eviction of the Defendants from LR no. 209/7260/61.
  - i. General damages for trespass.
  - j. Costs of this suit together with interest thereon at such rate and for such period of time as this Honourable Court may deem fit to grant.
  - k. Any such other or further relief as this Honourable Court may deem appropriate.
2. Upon being served with the Plaint and Summons to Enter Appearance, the Defendant herein duly entered appearance and thereafter filed a Statement of Defence dated 13/04/2021,
  3. Based on the foregoing pleadings, the subject matter was set down for hearing and the same indeed proceeded by way of viva voce evidence. Nevertheless, it is imperative to note that the Plaintiff called one witness who testified on 16/02/2022 and 28/06/2022 and at the close of the Plaintiff's case, the Defendant called one witness who testified on 28/06/2022. At the close of the Defendant's case, the Court summoned two Expert witnesses who testified on 7/07/2022, 11/10/2022 and 20/11/2023.

#### **Plaintiff's Case:**

4. In summary, the Plaintiff asserts ownership and entitlement to the property known as L.R. No. 209/7260/61, situated next to Kenya Bus Station/Pumwani, Eastleigh within Nairobi City County. The Plaintiff maintains possession of the original Grant/Title for the property and has never transferred or relinquished it. According to the Plaintiff, the Defendant has fraudulently and unlawfully entered and taken possession of the property, and has wrongfully remained there, constructing developments in disregard of the Plaintiff's proprietary rights.
5. Historically, the property was first allocated to Frabill Company Limited by the defunct Nairobi City Council on 13/12/1995. Frabill Company Limited subsequently sold the property to the Plaintiff on 7/04/1999, leading to the issuance of the Grant to the Plaintiff. The Plaintiff claims that the Defendant's actions have led to misuse, damage, waste, destruction, pollution, and degradation of the property, depriving the Plaintiff of its use and enjoyment.
6. The Plaintiff argues that the Defendant has no legal right to the property and has never enjoyed peaceful, uninterrupted, or exclusive occupation of it. The Defendant's continued wrongful occupation and trespass threaten the Plaintiff's proprietary interests. The Plaintiff seeks the Court's intervention to restrain the Defendant from remaining on the property and to compel her to vacate it, emphasizing that the Defendant has refused to vacate despite requests.

#### **Plaintiff's Evidence**

7. PW1 – Gopal Dhanji Patel adopted his witness statement dated 9/02/2017 together with a list of documents filed in the Plaintiff's bundle dated 9/02/2017 from page 13-26 and produced them as his evidence in chief and exhibits in this Court. The documents were marked as Exh 1-5.
8. As the director of the plaintiff company, PW1 confirmed that he is the custodian of all original documents related to the case, and he presented these documents in court. He produced a letter of allotment dated 13/12/1995, along with a receipt for the payment of the stand premium. Additionally, he presented an agreement for sale dated 7/04/1999, and the original document stamped to confirm that the stamp duty was paid. He provided a power of attorney appointing the plaintiff to manage the



property, which is also registered and stamped. He introduced a beacon certificate dated 13/12/1995, signed by a land surveyor on 10/06/2003, referring to an unsurveyed plot No. R6 originating from LR No. He submitted the original beacon certificate, the original grant with the accompanying deed plan, and original receipts for the survey payment. He also included a receipt for the submission of the development plan for the land and the FR indicating the plot or suit property, all of which were produced in his bundle of documents.

9. During cross-examination, PW1 testified that he purchased the suit property from Mr. Leekolol, the Commissioner of Nairobi, through the company for Kshs. 500,000 and has submitted all original documents to the court. He clarified that he is the director of the plaintiff company, though he could not confirm he has authority to represent it as he did not have the CR 12 document in court. He stated that the property was bought from Frabill Company on 9/04/1999, and a power of attorney was given by Frabill to Terrazzo, registered on 28/10/2002. Despite the letter of allotment dating back to 1995, the title was only issued in 2006, with registration noted on 3/05/2007.
10. PW1 presented a bundle of documents dated 25/02/2022, including receipts from Nairobi City Council, a power of attorney, and a title issued to Terrazzo Ltd. He mentioned various receipts for land-related expenses and confirmed his role as a shareholder and managing director of Terrazzo. Despite discovering a trespass on the property in 2009, he only filed the case in 2017. He confirmed there was no authority given for occupation, yet found a building erected by the defendant.
11. PW1 admitted that he had not made recent payments to the City Council, and while he provided documents proving ownership and payments, he did not file an official authority to represent the company in court. He pointed out that Frabill sold the property to Terrazzo, which was followed by the issuance of a power of attorney, registered three years later. Despite discovering the defendant's fraudulent acquisition, he has not detailed the fraud in the plaint or sought the cancellation of the title. He did not sue the county government or the registrar, despite their roles in property management and title issuance. He acknowledged the presence of apartments on the property and was unaware of any charges in favor of a bank. PW1 did not conduct a current search on the property and could not confirm if the defendant is the current registered owner.
12. In re-examination, PW1 emphasized that at page 19, there is an application for search by Amos Ben Oginga, a clerk at their office. The document at page 20-21, the document is a search he obtained at Land Registry. At page 22, there is a copy of original title and he produced the same in court as evidence of his ownership. He was not known to the defendant and he has no clue how she obtained this with property. He has not sued the county government; he has no grievance against them because his documents are bona fide. He has not sued the land registrar because the search showed that Terrazzo was the owner of the land so he has no grievances against them. At page 19, he did a search on 12/11/2015.
13. After hearing the testimony of the one witness, the Plaintiff's case was closed.

#### **Defendant's Case:**

14. The Defendant denies all allegations of fact and law made by the Plaintiff, asserting that she is the legally registered owner of the property known as Land Reference Number 209/7260/61 and has enjoyed peaceful possession of it for over 17 years. She acknowledges constructing residential apartments on the property, funded by a loan secured through a financial institution, and leasing these apartments to third-party tenants.
15. The Defendant maintains that the Plaintiff has no proprietary rights to the suit property. The property was initially allotted to Risk Management (Africa) Limited by a Letter of Allotment dated



8/08/2002, from the defunct Nairobi City Council. The Defendant purchased the property from Risk Management (Africa) Limited through a sale agreement dated 15/08/2004, and subsequently received the title deed. She argues that, as the legally registered owner, she has always enjoyed peaceful and uninterrupted possession of the property and sees no reason to vacate it.

16. Additionally, the Defendant contends that the Plaintiff's suit is time-barred under the *Limitation of Actions Act*, Cap 22 of the Laws of Kenya, rendering the court without jurisdiction to hear the case. The Defendant argues that the relief sought by the Plaintiff is unavailable, given her lawful ownership, and she requests that the Plaintiff's suit be dismissed with costs.

### **Plaintiff's Reply to Defence**

17. The Plaintiff joins issues with the Defendant's Defence dated 13/04/2021 (the Defence) save for admissions contained therein. The Plaintiff reiterates that it is a Limited Liability Company registered under the *Companies Act*, cap. 486 Laws of Kenya (Repealed) having its registered office and principal place of business at Nairobi within the Republic of Kenya. The Plaintiff avers that the Defendant does not or has never enjoyed peaceful, uninterrupted, quiet and/or exclusive possession or occupation of the suit property.
18. The Plaintiff states that the suit property was allocated to Frabill Company Limited vide a Letter of Allotment dated 13/12/1995 prior to the purported allotment to Risk Management (Africa) Limited on 8/08/2002. The Plaintiff further avers that the suit property was not available for allotment to Risk Management (Africa) Limited having been allotted to Frabill Company Limited. The Plaintiff avers that Defendant has trespassed on the suit property.
19. The Plaintiff avers that the suit is not time barred and that it is the registered owner of the suit property and therefore entitled to the prayers sought.

### **Defendant's Evidence:**

20. DW1 – Helena Njeri Mbugua adopted her witness statement dated 15/11/2021, a further witness statement dated 14/02/2022 together with a list of documents dated 15/11/2021 and produced them as her evidence in chief and marked them as exhibits 1-13. She would like the Court to dismiss the Plaintiff's case with costs.
21. During cross-examination, DW1 testified that she did not produce any original documents to support her case. She mentioned that a copy of the title at page 1 of her bundle shows the original is with Equity Bank. The title in her bundle is Grant No. 104590, with an IR number 23787/2, which differs from the Plaintiff's title IR 101134 and 23757/2. She was unaware of the issuance date of the Plaintiff's grant. At page 2 of her bundle, the title issuer is named Judith Marilyn Okungu, although DW1 was unaware her actual name is Okumu. She acknowledged an agreement at page 6 of her bundle for the purchase of the property, but could not explain why the original was not produced nor if stamp duty was paid.
22. She mentioned a beacon certificate at page 10, the original of which is in her office, with reference number CU1010/8/26/055 and allocation details to plot number R6. She admitted having a copy of her allotment letter but not in court. She did not provide a copy of the survey plan number FR/269/13 mentioned in her beacon certificate. She claimed she surrendered the original map to the land registry once she got the title. She did not produce original receipts but said they are in her office. She clarified that she instructed her lawyer to produce the title, not Risk Management, which only gave her the beacon certificate and the letter of allotment dated 8/08/2002. The title terms at page 1 state 1/06/1999. The Plaintiff's allotment letter is dated 13/12/1995, with the title commencing on 1/06/1999. She has developed the property and owns the entire building, authorizing all tenants, thus



rejecting claims of trespass. Although she has a sale agreement and receipts for her purchase, they were not produced in court.

23. In re-examination, she testified that the original title is at Equity Bank. The search at page 13 is dated 24/04/2015 which is the last charge. The plaintiff has not called any witness from the county or the land's office to disapprove the titles produced in court.
24. With that evidence, the Defendant closed her case.

#### **Expert witnesses**

25. DW2 – Vincensia Juma testified that she is a Land Registrar at the office of the Chief Land Registrar, Ardhi House. It is her testimony that they received summons dated 29/06/2022.
26. During cross-examination, DW2 testified that at page 2, they have indicated that both parties were to appear and bring documents relating to the suit property e.g., title deed, letter of allotment, copies of their IDs, PIN, sale agreement. The Plaintiff produced a copy of the title, letter of allotment and payment receipts. The summons sent was requesting for them to produce these documents so that they could see the history. She never got into allotment issues because there is a different office. They only dealt with the registration document. She could not testify to the original letter of allotment but the director of land administration would tell but not her. Therefore, as per her records, the registered owner is the defendant. When you key in the IR numbers, it gives you only the Defendant's title and not the plaintiff's. currently, they have the old system and the new system. It is not possible to have two titles in the system because during scanning, the fake title is cancelled.
27. DW2 further testified that the summons was for her to produce a search and yes, they filed it and it confirms that the owner is the Defendant. The commissioner is Judith Marilyn Okungu. The title produced by the Plaintiff reads the name Judith Marilyn Okumu as seen on page 22 of the Plaintiff's schedule. A search conducted indicates the date when a title was registered. The plaintiff's bundle at page 20-21 has a search which the plaintiff claims to have conducted. It does show when the title was issued as being 1/06/1999 then at page 21, the stamps show the date indicated by the commissioner as 7/05/2007. According to these documents, the purported search is dated 10/05/2007 and the title issued on 7/03/2007. The name of the commissioner is Judith Marilyn Okumu. These documents do not reflect their search stamp. It just shows that it was presented on a certain day and entered in their day book. The stamp dated 10/05/2007 is not a search stamp.
28. In re-examination, she testified that with regard to the stamp, it is a presentation stamp not a search stamp. The scan stamp is also on the plaintiff's document however, the plaintiff's IR is not in their records.
29. DW3 – Gordon Odeka Ochieng testified that he works with MoLPWHUD as a Director, Land Administration. He has worked at the Ministry since 1989. He adopted his witness statement dated 29/09/2023 as his evidence in chief. He also produced fourteen documents as his exhibits.
30. During cross-examination, DW3 testified that he has served as a Director Land Administration since 2021 and he is fairly versed with the land matters. At paragraph 3, he has stated the process that leads to registration of new grants. He has stated that Nairobi City County was issued with the new sub-grant title following sub-division. They process and do titling for change of user, new grants and leases. They are custodians of land records. The defendant did not apply for allocation. The land had already been allocated to Nairobi City County. The 15 acres. They sub-divided it. He did not have a letter of allotment for the defendant nor the document at no. 4,5, the one at step 6 he has a copy at page 5 at the bottom. Before a deed plan is issued, survey comes after allocation. It is the responsibility of the allottee



to carry out survey plans in line with the PDP or subdivisions. Then they submit their works to the director of survey for checks and quality survey and he will issue relevant surveys. After the completion, the Director of survey writes to the Director of Land Administration to now state that a PDP can be processed and grant. He has not annexed any correspondence. The correspondence file for this matter is missing but he never indicated that it is missing. Neither is there a disclaimer. Step vii, here one extracts the attributes of the title and these are conveyed to the commissioner of lands through a memo.

31. Paragraph 8-9 states that the defendant owns the title but there are no documents to support this claim. The steps indicated at paragraph 3 would apply to the first title. For the second title which is a subdivision, the process would be initiated by the registered owner, who is Nairobi city Council who would prepare a sub-division showing plots created out of the main title and their respective users. DW3 has not produced the sub-division scheme. It would also contain recommendations of the planning authority of that council which would be in writing. There is a copy of this at page 21 which is a letter that addresses change of user. At this point, 209/7260/1 had not been created. Thereafter, it is submitted to the commissioner of lands, the Nairobi city council would convey the sub-division through a list but he did not have the list before the court. He could not trace it in the file. The letter of allotment relates to new grants and not to sub-divisions. The letter of allotment at page 5 of the defendant's bundle is not issued nor addressed to DW3 so he cannot comment on its efficacy. The list he received is not produced in court. The next step is to request for a valuation to determine the annual rent payable to the plot. He has produced it in court from pages 14 which is a request to determine the rent. It is dated 19/06/2002 and the letter at page 21 was done in 1996 but assessment of rent payable was done in 2002. At page 19, the document bears the name Komondu. As per this document at page 14, the Stand Premium would be Kshs. 22,000.00 and the annual rent is Kshs. 4,400.00. Once the assessment is done then the commissioner calls for payment of the fees payable. DW3 did not have evidence of payment made since the file is missing. After payment of fees payable, the commissioner would call for surrender of the head title and then submissions of the deed plan to the commissioner of lands either by director of Survey or license surveyor of city council of Nairobi.
32. The last step is registration of the title which is actual grant. He has attached valuation requisition and supportive documents. He has confirmed that the annual rent is consistent with what is typed on the defendant's title and that the title surrendered by the City Council is consistent with the IR typed. There are corresponding consents issued by the commissioner of lands. In the absence of the file, he was able to use the documents available at the registry and he was able to confirm the consistency of the documents. The documents he has applied supported creation of title. It is not normal for a file to miss though this is a serious anomaly.
33. IR 23757/2 is not in respect to the surrendered title but he has no clue that it exists, was amended or not. Title surrendered by Nairobi city council was not IR 23757/2. They have records of the defendant's title. He did not come from the office of the county government.
34. After hearing, parties closed their respective cases and the Court gave directions of filing of written submissions on 30/04/2024.

#### **Submissions:**

35. The Court gave directions on filing of written submissions on 30/04/2024, which the Plaintiff and the Defendant did, and I have considered them. The Plaintiff's submissions are dated 27/05/2024 and filed on 30/05/2024, the Defendant's submissions are dated 27/05/2024 and were filed on 28/05/2024.



### **Issues for Determination:**

36. Having reviewed the Pleadings filed by the Parties herein, and essentially the Plaint dated 9/02/2017, the Statement of Defence dated 13/04/2021, the Reply to defence dated 10/05/2021 and having taken into account the documentary evidence tendered and produced by the parties herein, as well as the oral testimony adduced before the Court and having similarly evaluated the submissions filed, the following issues do arise and are germane for;
- i. Whether the present suit as against the Defendant is sustainable in law.
  - ii. Whether the Plaintiff is the bona fide owner of the suit property.
  - iii. Whether the Plaintiff is entitled to the orders sought.
  - iv. Who should bear the costs of this suit?

### **Analysis and Determination**

#### **Whether the present suit as against the Defendant is sustainable in law.**

37. In her defence dated 13/04/2021, the Defendant contended that the Plaintiff's suit is statute barred by virtue of the [Limitation of Actions Act](#) Cap 22 of the Laws of Kenya hence the Court lacks jurisdiction to entertain the suit. In its reply to defence, the Plaintiff contended that the suit is not time barred. The Defendant's counsel proceeded with viva voce hearing and did not bring this issue up. It is my considered view that the issue was for all purposes deemed as abandoned by the Defendant and therefore I shall not determine the same.

#### **Whether the Plaintiff is the bona fide owner of the suit property.**

38. The bone of contention in this matter mainly revolves around two parties herein who are claiming to be the lawful owners of property known as LR No. 209/7260/61, Eastleigh, Nairobi. Essentially, the Plaintiff's main issue is that there was double allocation of land and that the first allotment should prevail.
39. In the case of *Hubert L. Martin & 2 Others v Margaret J. Kamar & 5 Others* [2016] eKLR, Munyao J held as follows;
- 'A court when faced with a case of two or more titles over the same land has to make an investigation so that it can be discovered which of the two titles should be upheld. This investigation must start at the root of the title and follow all processes and procedures that brought forth the two titles at hand. It follows that the title that is to be upheld is that which conformed to procedure and can properly trace its root without a break in the chain. The parties to such litigation must always bear in mind that their title is under scrutiny and they need to demonstrate how they got their title starting with its root. No party should take it for granted that simply because they have a title deed or Certificate of Lease, then they have a right over the property. The other party also has a similar document and there is therefore no advantage in hinging one's case solely on the title document that they hold. Every party must show that their title has a good foundation and passed properly to the current title holder.'
40. The Plaintiff's claim to the suit property is anchored on the letter of allotment issued to Frabill Company Limited on 13/12/1995. It is trite law that once an allottee has complied with the terms of the letter of allotment, the land becomes unavailable for re-allocation, it is imperative to take cognizance of the decision in the case of *Republic v City Council of Nairobi & 3 Others* [2014] eKLR.



41. The Plaintiff asserted that it was, is and has at all material times been the bona fide and duly registered owner of the suit property. It is their claim that it purchased the suit property from Frabill Co. Ltd vide Agreement of sale dated 7/04/1999 for a consideration of Kshs. 500,000.00. The Plaintiff's director claims that Frabill Co. Ltd was allocated the suit property by the now defunct Nairobi City Council vide Letter of Allotment ref no. CV.1013/S/26/0 dated 13/12/1995. The Letter of Allotment purportedly issued to Frabill Co. Ltd was for LR No. 209/7260 (Part) – Plot no. R6 measuring 0.025 ha at a stand premium of Kshs. 40,000.00 and annual rent of Kshs. 2,000.00. The Plaintiff's root of title therefore is anchored from M/s Frabill Company Ltd.'s letter of Allotment dated 13/12/1995.
42. Legally, a letter of allotment is an intention by the Government to allocate land. It is not a title. A letter of allotment does not confer a proprietary right but only a right to receive property or to be allocated on complying with the terms and conditions stated therein. The right to be allocated the property is a contractual right and must be determined in accordance with the ordinary rules of contract. See *Lilian Waithera Gachuhi v David Shikuku Mzee* [2005] eKLR and *Philma Farm Produce & Supplies & 4 others v The Attorney General & 6 others* [2012] eKLR.
43. From the evidence tendered and/or availed to the Court, it is apparent that the suit property was allocated to and/or in favor M/s Frabill Company Ltd vide letter of allotment dated 13/12/1995 by the now defunct Nairobi City Council and it is also evident that the same was also allocated to and/or in favor M/s Risk Management (Africa) Ltd vide letter of allotment dated 8/08/2002.
44. From the record, upon the allotment of the suit property to and in favor of the said Frabill Company Ltd, they were required to comply with the terms of the letter of allotment, including inter alia payment of the monies indicated therein and issue a letter of acceptance within the prescribed 30 days from 13/12/1995. It was a condition of the letter of allotment that the allottee was to accept the terms within 30 days from 13/12/1995. Frabill Co. Ltd was issued with a receipt no. CT/608 dated 28/01/1997 for Kshs. 40,166 which was payment for stand premium and annual rent. It is clear that they failed to comply with the terms as the payment of monies was evidently paid in about two years after the issuance of the letter of allotment. No evidence, namely, the letter of acceptance was produced or availed before the Court.
45. In the absence of acceptance and the late payments of the monies stipulated on the face of the purported letter of allotment, it is my finding and holding that the letter of allotment had long lapsed.
46. There is no evidence before me that the city council of Nairobi issued a certificate of confirmation of ownership to Frabill Co. Ltd which would confirm and/or authenticate that indeed Frabill was the true allottee of the suit property.
47. Other than the issuance of a certificate of confirmation of ownership, the Plaintiff has essentially alleged that the City council of Nairobi proceeded to carry out a survey in respect of the suit property by producing receipt no. CT/608 dated 11/04/2001 issued for payment of survey fees drawn in favor of Frabill Co. Ltd. The Plaintiff has adduced a beacon certificate at page 32 of the Plaintiff's bundle issued to and in the name of Patel Gopal Dhanji Velji c/o Terrazzo Enterprises instead of Frabill Co. Ltd. For clarity, the beacon certificate was issued on 10/06/2003. The beacon certificate states that Patel Gopal Dhanji Velji c/o Terrazzo Enterprises was allocated Ref. No. R6 L/R No. 209/7260 (Part) vide allocation letter ref. no. CV.1013/S/26/0104 dated 13/12/1995.
48. The Plaintiff has not produced evidence that Frabill Co. Limited was ever issued with a Deed of Assignment or any transfer document from the Nairobi City Council drawn in favour of Frabill Co. Ltd. It is worthy to note that where an allottee purports to have complied with the terms of the Letter of allotment and the allotting authority should then proceed to execute a transfer instrument or a Deed



of assignment, which is executed in favor of the first allottee and which is thereafter transferred in favor of the vendor and ultimately transferred in favor of the Plaintiff, with the approval of the city council of Nairobi, now defunct, the beneficiary of such allotment, acquires a legitimate title and same becomes private property, which cannot be impugned without compliance with due process of the law. See *Benja Properties Limited v Syedna Mohammed Burhannudin Sahed & 4 others* [2015] eKLR.

49. This was not the case in this matter. It is emergent that a litigant basing their interest in land on the foundation of an allotment letter must provide the following proof: First, the allotment letter from the Commissioner of Lands; Secondly, and attached to the allotment letter, a part development plan; Thirdly, proof that they complied with the conditions set out in the allotment letter, primarily that the stand premium and ground rent were paid, within the specified timeline. It would also help a litigant's case, although this may not be mandatory based on the stage of the transaction, to have a certified beacon certificate. None of these grounds were met by the Plaintiff. (See *Ali Mohamed Dagane (Granted Power of Attorney by Abdullahi Muhumed Dagane, suing on behalf of the Estate of Mohamed Haji Dagane) v Hakar Abshir & 3 others* [2021] eKLR).
50. The Plaintiff has not sufficiently demonstrated that Frabill Co. Ltd accepted the terms of the purported letter of allotment dated 13/12/1995. The Plaintiff has demonstrated that the payment of the monies stipulated was done 2 years or so instead of within the required period of 30 days. The offer to Frabill Co. Ltd lapsed on 12/01/1996 and therefore they did not have the authority or any interest in the suit property to transfer to the Plaintiff as they purported to do as they were not the registered owners of the suit property.
51. Once again, in the absence of acceptance and/or payments of the monies stipulated on the face of the purported letter of allotment, it is my finding and holding that the letter of allotment, even if same had not been illegally issued, same would have long lapsed.
52. Simply put, if the terms of a letter of allotment are not complied with within the statutory timelines, same lapses automatically and hence ceases to exist in the eyes of the Law.
53. In support of the foregoing holding, it is sufficient to take cognizance of the decision in the case of *H.H. Dr. Syedna Mohammed Burhannuddin Saheb & 2 OTHERS v Benja Properties Ltd & 2 Others* [2007] eKLR, where the Honourable Court, Visram Judge, held as hereunder;

“In any event, the letter of allotment relied upon by the Defendant had itself expired, and was therefore invalid. I do not accept Mr. Kirundi, Counsel for Defendant's argument, that the expired letter, when acted upon, had been “revived” through conduct. The letter had expired. It was dead. There was nothing to “revive”.
54. Other than the foregoing, the Court summoned the Director of Land Administration to shed light on the issue of ownership of the suit property. One Gordon O. Ochieng filed a witness statement dated 29/09/2023 noting that he is the Director Land Administration working with the Department of Lands at the MoLPWHUD. He highlighted the process of registration of new grants. He added that according to their records, LR No. 209/70260/61 came about as a result of subdivision of LR No. 29/7260 which was registered at the land title's registry at Nairobi as 23787. LR No. 209/7260 was leased by the Government of Kenya to Nairobi City Council for a term of 99 years with effect from 1/03/1955. It was 15 ha. The title to LR No. 209/7260 registered as 23787 was surrendered back to the Government of Kenya pursuant to a subdivision and change of user. The surrender was registered on 9/08/1996. Nairobi city council would then recommend to the commissioner of land details of blood owners for purposes of issuance of title. It was his further contention that their records show that LR



No. 209/7260/61 is registered in the Defendant's name under title IR No. 104590. Their records show that the Defendant is the registered lessee for a term of 99 years with effect from 1/06/1999.

55. The Plaintiff claims that Frabill Company Ltd was the first allottee vide a Letter of Allotment dated 13/12/1995. I note that from the evidence produced by the Director of Land Administration, from the land records, LR No. 209/7260 was surrendered back to the Government of Kenya pursuant to a subdivision and change of user and the surrender was registered on 9/08/1996. How then was Frabill Company Limited allocated land by the now defunct Nairobi City Council in December 1995, a whole 240 days before the was subdivision of LR No. 209/7260 was even registered?
56. A title that is to be upheld is that which conformed to procedure and can properly trace its root without a break in the chain. The Plaintiff's root of title begins with the Letter of Allotment dated 13/12/1995 issued in favour of Frabill Company Limited. This Letter of Allotment expired and was therefore invalid. To this end, it is my considered view and I agree with the Defendant's counsel's submission that the Plaintiff has not adequately demonstrated adherence to the correct procedural protocols in acquiring the suit property.
57. In my humble view, the purported registration of the suit property to and in favor of the Plaintiff was predicated and/or premised on the unlawful letter of allotment and hence the same was plagued with illegalities, to the extent that the entire process was un-procedural and void ab initio. Moreover, considering that this letter of allotment dated 13/12/1995 was the document in which the Plaintiff has founded its claim to the suit property, it follows that the Plaintiff is not the bona fide owner of the suit property.

#### **Whether the Plaintiff is entitled to the orders sought.**

58. Based on the findings and holdings in the above issue, it is my humble position that the Plaintiff has not laid and/or established before the Court a clear-cut case for the grant of the orders sought at the foot of the Plaintiff's pleadings. Consequently, I will proceed to dismiss the Plaintiff's suit as it is devoid of merit.

#### **Who should bear the Costs of this Suit?**

59. It is trite law that costs follow the event. Section 27 of the *Civil Procedure Act* gives the Court discretion to grant costs. As the successful party is always entitled to costs except in exceptional circumstances, no exceptional circumstance exists in this suit, and thus the Court finds that the Defendant being the successful litigant, is entitled to the costs of the suit.

#### **Disposal orders**

60. Accordingly, it is my humble view that the Plaintiff has not proved its claim to the required standards to be entitled to the reliefs sought. I decline to enter judgment for the Plaintiff against the Defendant as prayed in the Plaintiff's pleadings dated 9/02/2017 for lack of merit. The Plaintiff's suit is hereby dismissed with costs to the Defendant.
61. It is so ordered.

**DATED, SIGNED and DELIVERED at NAIROBI this 1st DAY OF JULY 2024.**

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**MOGENI J**

**JUDGE**

**In the virtual presence:**



**Ms. Bundi holding brief for Mr. Gitonga for Plaintiff**

**Mr. Kenneth Wilson for Defendant**

**Caroline Sagina - Court Assistant**

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**MOGENI J**

**JUDGE**

