



**Ngoge v Isanda & 2 others (Environment & Land Case 99 of 2016)
[2023] KEELC 17254 (KLR) (4 May 2023) (Judgment)**

Neutral citation: [2023] KEELC 17254 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 99 OF 2016**

OA ANGOTE, J

MAY 4, 2023

BETWEEN

GRACE AKINYI NGOGE PLAINTIFF

AND

JOHN ABUYA ISANDA 1ST DEFENDANT

MARY NJOKI FUNDI 2ND DEFENDANT

NAIROBI CITY COUNTY 3RD DEFENDANT

JUDGMENT

Background

1. The Plaintiff filed ELC No 99 of 2016 against the 1st and 2nd Defendants vide an Amended Plaint dated 28th March 2017. This suit was consolidated with ELC No 6 of 2016, where the 1st and 2nd Defendants sued the 3rd Defendant. In the Amended Plaint, the Plaintiff has sought the following reliefs:
 - a. A permanent injunction issued against the Defendants whether by themselves, their respective servants, agents and employees from entering, trespassing, remaining in possession, constructing or whatever deadline with all that piece of land known as LR No Nairobi/ Block 63/643.
 - b. An eviction order to the Defendants by themselves, their respective servants, agents and or employees and removal of all illegal structures on all that parcel of land known as LR No Nairobi/ Block 63/643.
2. The Plaintiff's suit is that she is the registered owner of all that parcel of land known as Nairobi/ Block 63/643 located in Jamhuri Phase II, Nairobi (the suit land); that upon being informed that some people had pulled down her fence and were erecting an iron sheet fence on her property on 28th January



- 2015, she confronted the workers on site the following day and that a representative of the Defendants appeared, claiming that the plot belonged to them.
3. The Plaintiff averred that she reported the matter at the Chief's Office and at Kilimani Police Station and that despite being warned by the Chief and the OCS Kilimani Police Station, the Defendants continued with the acts of trespass and illegal construction, which actions stand to occasion the Plaintiff irreparable loss and damages.
 4. The 1st and 2nd Defendants opposed the suit vide a Statement of Defence and Counterclaim dated 9th April 2018. They averred that any documentation granting the Plaintiff ownership of the suit land was obtained fraudulently and cannot stand the test of scrutiny and that they are entitled to develop the said plot as they acquired the same from its previous owners after paying the full purchase price.
 5. In the counterclaim, the Defendants averred that they are the lawful owners and occupiers of Plot No 81 located in Jamhuri Phase II measuring approximately 0.02 hectares, which they acquired from David Onsongo Obure; that the said David Onsongo Obure acquired the property from the original allottee, Julia Makunda Isoyi vide a Sale Agreement dated 29th September 1999 for Kshs 550,000 and that the original allottee further wrote to the Nairobi City Council vide a letter dated 29th September 1999 instructing them to transfer the suit property to David Onsongo Obure.
 6. The 1st and 2nd Defendants averred that on 17th December 1999, David Onsongo Obure paid to the Nairobi City Council the transfer fees of Kshs. 1000 and was issued with an allotment letter dated 20th December 1999. According to the Defendants, David Onsongo Obure agreed to sell the suit property to the Defendants vide a sale agreement dated 29th April 2002 for Kshs. 3,000,000 and that the transfer was endorsed by the Nairobi City Council where after they took possession.
 7. The 1st and 2nd Defendants averred that on 4th January 2016, while carrying out construction on the suit property, a third party who introduced himself as Captain Mwaniki visited the suit property, took photographs of the developments and advised the Defendants' workers to stop constructing on the suit land and that it was the first time the Defendants became aware that a Certificate of Lease had been issued to another party in respect of the suit land.
 8. It is the Defendants' case that the Certificate of Lease was issued to the Plaintiff fraudulently and that the Plaintiff's name does not appear in the records of the Nairobi City Council as an allottee of the suit property. The 1st and 2nd Defendants have sought judgement against the Plaintiff for:
 - a. A permanent injunction do issue against the 1st Defendant either by herself or any other person acting under her instructions from trespassing into or in any other manner interfering with the Plaintiffs utilization and quiet possession of the Defendants' parcel of land plot No 81 in Jamhuri Phase II (suit property).
 - b. Cancellation of the Plaintiff's fraudulent Certificate of Lease issued on 27th October 2001.
 - c. Damages as a result of the stalled construction.
 - d. Costs of the counterclaim.
 - e. Any other relief that the court deems fit in the circumstance.
 9. The Plaintiff, vide a Reply to Defence and Counterclaim averred that there is no Plot No.81 located in Jamhuri Estate and that her property has a title issued to her being Nairobi Block 63/643; that she



has never sold her property to David Onsongo Obure and that her lease certificate was lawfully issued to her.

Hearing and Evidence

10. The Plaintiff, PW1, relied on her witness statement, which she adopted as her evidence in chief. PW1 also filed a list of documents which included a copy of the certificate of lease; official search extract as at 18th January 2016; photos of the alleged illegal activities; receipts of rates; statutory demand letter and the Plaint that David Onsongo Obure filed in Civil Suit No 782 of 2002.
11. The Plaintiff also adduced in evidence the Supporting Affidavit of Franklin Magaju filed in Civil Suit No 782 of 2002; Nairobi City Council Amended Statement of Defence in Civil Suit No 782 of 2002; the letter requesting for information dated 9th August 2019, amongst other letters and the letter of allotment dated 10th February 1992, the lease dated 27th December 2001 and the rates clearance certificate.
12. PW1 testified that an allotment letter was given to her on 10th February 1992 and that she entered into a lease agreement with the Nairobi City Council which was registered on 27th November 2001. PW1 averred that she and the Nairobi City Council were sued by David Onsongo Obure in Nairobi HCC No 782 of 2002 and that the suit was later dismissed.
13. It was the evidence of PW1 that the sale agreement between David Onsongo Obure and the Defendants is dated 29th April 2002 yet Mr. Obure filed suit against PW1 over the same property on 10th May 2002; that the letter of allotment to David Onsongo Obure issued on 20th December 1999 was signed by Zipporah Wandera and yet as at that date, Zipporah was not in office.
14. PW1 testified that through the letter dated 9th August 2019, she sought to know when Zipporah Wandera ceased to be a Town Clerk and that she received a response on 29th October 2019 confirming that Zipporah left the office and proceeded on compulsory leave on 11th November 1999. PW1 adduced in evidence the minutes of the Nairobi City Council showing that Mr. J.O. Ongele was appointed acting town clerk with effect from 11th November 1999.
15. In cross-examination, PW1 testified that she paid all the stand premium indicated in the allotment letter within 30 days, as evidenced by the receipt dated 24th February 1992; that she took possession of the suit land immediately upon purchase and that there was an invasion of the suit property in May 2002 which she reported to the local chief and later filed a case in court, whose details she could not recall.
16. PW2, Gilbert Okello, informed the court that he is attached to the Fraud Investigation Unit of the DCI, dealing with land fraud issues; that they received a complaint from the 1st Defendant who also provided an allotment letter dated 20th December 1999 issued from City Hall and receipts; that they also received documents from the Plaintiff which included an allotment letter, a lease and receipts from City Hall and that he prepared an investigation report with respect to Plot 81 Jamhuri.
17. PW2 informed the court that they considered the two allotment letters and found that they were both signed by the town clerk Z. Wandera; that upon analysis, the letter of allotment in favour of John Abuya, the 1st Defendant, was found to be a forgery and that the signature thereon allegedly by Z. Wandera was not genuine, whereas that on the letter of allotment of the Plaintiff was genuinely signed by Z. Wandera.
18. PW2 further testified that upon conducting a background check on Z. Wandera, he was informed by Human Resource at City Hall that Z. Wandera was issued with a compulsory leave letter dated 11th



- November 1999 and that the letter of allotment to David Obure was issued after the said Town Clerk had left the office, which was in tandem with their forensic finding.
19. It was the evidence of PW2 that the minutes from City Hall shows that J Ong'ele took over from Z. Wandera on the same day she was sent on compulsory leave; that the minutes show that Z. Wandera was designated to carry out the duties of a clerk and that they visited the Ministry of Lands where he was issued with a green card which supports the ownership of the Plaintiff. PW2 informed the court that he recommended David Onsongo Obure to be charged for making a false document and obtaining by false pretences.
 20. In cross examination, PW2 testified that he did not obtain specimen signatures from Z. Wandera as she is deceased and that he obtained her known signature as G035 and G036.
 21. The 1st Defendant, DW1, relied on his written statements dated 8th January 2016 and 9th April 2018 as his evidence in Chief. DW1 averred that him and the 2nd Defendants are joint allottees of Plot 81 in Jamhuri Phase II; that they bought the property from David Onsongo Obure vide a sale agreement dated 29th April 2002 and that the said David Onsongo Obure purchased the property from Julia Makunda Isoyi vide a sale agreement dated 29th September 1999.
 22. It was the evidence of DW1 that that they presented the allotment letter issued to David Onsongo Obure to the City Planning and Architecture Department of the Nairobi City Council, who confirmed that his name appeared as the allottee of the plot in their records and acknowledged the transfer of the plot to the Defendants.
 23. DW1 averred that they immediately took possession of the land and have had quiet and uninterrupted possession since 2002; that the suit property does not have a lease document and that they commenced the process of processing a lease by paying the survey fees and were issued with a clearance letter by the NCC's Chief Financial Officer.
 24. It was the evidence of DW1 that as they awaited for the lease documents to be processed, they submitted building plans to the Nairobi County Council who approved the same upon payment of the required fees and that they thereafter commenced construction.
 25. DW1, in his further Witness Statement dated 9th April 2018, averred that the Plaintiff fraudulently processed the lease in her name; that the fraudulent process is the subject of an ongoing investigation by the police and that the records of the Nairobi County Government affirmed that they are the rightful owners of the suit land.
 26. DW1 also produced three bundles of documents dated 11th January 2016, 16th April 2018 and 7th November 2018 as well as the letter of allotment which was marked as MFI2. The documents that DW1 produced included a copy of the sale agreement dated 29th April 2002; a copy of the sale agreement dated 29th September 1999; a copy of the letter dated 29th September 1999; receipt dated 17th December 1999 for transfer fees; and a letter of allotment dated 20th December 1999 issued to David Onsongo Obure.
 27. DW1 also produced in evidence receipts for stand premium, ground rent and survey fees; clearance letter dated 22nd January 2015; letter dated 27th January 2015 from the Nairobi City County Chief Lands Officer to the Director of Surveys; receipt issued by NCC on 22nd July 2015 for change of user; receipt issued by NCC on 23rd July 2015 for application for development; and building plans submitted to Nairobi City County on 23rd July 2015 and payments for the approvals.



28. During cross-examination, DW1 testified that he obtained a construction permit dated 12th June 2015, which shows that the plot that he bought is now known as Nairobi 63/643, and that he was not issued with a letter of allotment in his name, but rather, the letter of allotment that was issued to Mr. Obure was endorsed.
29. DW1 admitted that he was aware of HCC No 782 of 2002, which was filed while they were doing the transaction; that he never made payments to City Hall between 2002 and 2013; that he was not aware that the Plaintiff had a lease to the suit property at the time he purchased it and that there was no proof that the Plaintiff's Lease originated from City Hall. DW1 averred that he has been an employee at Nairobi City Council since 1987.
30. DW2 was Benson Ndegwa Gichohi from the Urban Planning Sector of the Nairobi Metropolitan Services, formerly Nairobi County. He averred that he evaluated the records on Jamhuri Phase II Scheme which belonged to Nairobi City County before its allocation to beneficiaries in the 1990s and that the Scheme was subdivided into 494 plots and allotment letters issued to individual allottees.
31. According to DW2, Plot No 81 Jamhuri Phase II was first allocated to Julia Isoyi Makunda, who transferred it to David Onsongo Obure, and that David Onsongo transferred the plot to the Defendants who are the current owners.
32. DW1 stated that upon survey and registration of the plot at Survey of Kenya, Plot No 81 was issued with a new number being Nairobi block 63/643; that the Defendants paid the stand premium to the Nairobi City County and that he had the original draft allocation letter to Grace Wamiria for Plot 81, dated 13th March 1992, which was later transferred to Julia Isoyi.
33. It was his evidence that he did not have the allocation letter dated 20th December 1992; that he only had the original allottees' list; that he did not know other transfers after Julie Isoyi and that they did not have the original allotment letter of the Plaintiff.
34. DW2 averred that it is the legal department that prepares leases; that all leases were prepared by Wandera and that the lease in question was issued before survey and allocation of block numbers. It was his testimony that all allocations in Jamhuri Phase II were done in 1997 and block numbers were allocated between 1992-1998.
35. DW3, an employee of the County Government of Nairobi, Investigations and Information Analysis Department stated that he conducted investigations pursuant to a complaint by the 1st Defendant through a letter dated 26th February 2020 and that the investigation established that the land was registered in favour of the Defendants. He produced his investigation report as DEXB5.
36. In cross-examinations, DW3 stated that while he was aware that the Land Fraud Unit of the DCI were also undertaking investigations, he did not find out the position of the DCI as at 25th September 2020, and that although he summoned the Plaintiff through her advocate to produce documents, he did not receive a response.
37. DW3 testified that he knew the 1st Defendant, who is a Superintendent in City Inspectorate Department; that he did not see an original allotment letter; that he did not collect specimen signatures from Mary Ngethe and that he did not ascertain whether the land had a title at the time of the investigation.
38. DW3 admitted that the Defendants' allotment letter is dated 20th December 1999; that as at that date, Z. Wandera was not in office and that any document signed by her on that date would not be binding.



39. DW4 was Abwao Erick Odhiambo who works as the County Solicitor with the County Government of Nairobi. DW4 adopted his written statement and produced a bundle of documents dated 10th September 2022 as DEXB6. The documents produced by DW4 included an internal memo from Chief Officer Urban Planning dated 25th May 2016; the letter of allotment dated 20th December 1999; the list of Allottees of Jamhuri Phase II Scheme and the letter from County Chief Officer Lands dated 27th January 2015.
40. DW4 also produced in evidence the internal memo from Chief Revenue Officer addressed to Chief Officer Lands dated 22nd January 2015; letter from County Secretary dated 12th September 2017; letter from Urban Planning to DCI dated 20th February 2018; letter from DCI confirming that the Defendants are registered owners of the suit property and a letter from Chief Lands Officer dated 8th March 2018 forwarding the 1st Defendant's lease.
41. DW4 testified that the information in their possession with respect to plot 81 was that it was in the names of the 1st and 2nd Defendants and that they recovered a copy of the list of the allottees as the original was with the EACC.
42. In cross-examination, upon being referred to page 17 of the Plaintiff's Supplementary list of documents, DW4 stated that they can issue an allotment letter twice when the land has been repossessed; that the 1st and 2nd Defendants have been paying ground rent for Plot 81 and that for Nairobi Block 63/643, the payment of rates was undertaken by the Plaintiff.
43. According to DW4, when repossession takes place, the allottee is given a notice of 30 days which is usually published by Nairobi City government in the dailies; that such repossession is also supported by minutes and that he did not see minutes or notice for repossession of the suit land from Julia Isoye.

Submissions

44. Counsel for the Plaintiff submitted that the Plaintiff has demonstrated the process she went through in acquiring the suit property; that the Plaintiff is entitled to protection afforded under Section 26 of the *Land Registration Act* and Article 40 of the *Constitution*; that the 1st and 2nd Defendants could not have acquired any title from David Obure as he did not have any title to the suit property and that the allotment letter which allegedly vested Mr. Obure with title to the property was fraudulent.
45. It was submitted that the Defendants' letter of allotment was supposedly signed by Ms. Zipporah Wandera on 20th December 1999 yet Ms. Wandera was sent on compulsory leave on 10th November 1999 and was not the Town Clerk on 20th December 1999.
46. Counsel for the Plaintiff submitted that the Defendants failed to explain how the original letter of allotment would bear the name of David Onsongo Obure; that the 3rd Defendant can only issue one allotment letter and that it is not possible that once an allotment letter is issued, a new one would be issued in the name of a second party even if the original allottee transferred his interest to such a party.
47. The Plaintiff's counsel submitted that even if Mr. Obure had an allotment letter properly issued to him, it could not defeat a valid certificate of title that was issued to the Plaintiff; that the Defendants have not demonstrated any ground upon which the Plaintiff's title should be cancelled and that the Plaintiff did not plead or particularize any fraud on the Plaintiff's part in their counterclaim.
48. The plaintiff's counsel submitted that the 1st and 2nd Defendants have not produced proof of any payment of the purchase price of the suit land nor have they adduced evidence of payment of the stand



- premium, rates and rent; that the Defendants never paid rates or rent until 2015 and that the stand premium was paid in January 2016, well beyond the 30-day period from 20th December 1999.
49. Counsel urged the court to note collusion between the Defendants, highlighting the fact that the 1st Defendant is an employee of the 3rd Defendant and may have exerted influence over the 3rd Defendant.
 50. Counsel for the 1st and 2nd Defendants submitted that the allotment letter issued to the Plaintiff was a forgery; that the same was issued by the defunct Nairobi City Commission which had ceased to exist and had been replaced by the Nairobi City Council and that the Plaintiff failed to provide evidence of acceptance of the conditions contained in the allotment letter.
 51. The Defendants' counsel submitted that there were no records of the Plaintiff's ownership of the suit property in the official records of the 3rd Defendant; that the registration of the Plaintiff as the owner of the suit land was fraudulent and that the Plaintiff produced a certificate of lease issued to her on 27th October 2001 as well as a lease from the 3rd Defendant registered on 27th December 2001, received by the Ministry of Lands on 27th December but stamped by the Collector of Stamp Duty on 27th October 2021.
 52. Counsel submitted that the Plaintiff obtained a certificate of lease two months before she signed the lease, demonstrating fraud and illegality; that PW2 failed to investigate all aspects of the case and sought to rely on documents provided by the Plaintiff and that PW2 failed to record any statement with any relevant official of the 3rd Defendant concerning the suit land.
 53. Counsel submitted that the 1st and 2nd Defendants have proved their counterclaim as they gave evidence that they acquired the property from David Obure, who purchased it from the 1st allottee, Julia Isoyi Mukanda; that the 3rd Defendant confirmed that Ms. Isoyi was the original allottee and was aware that she transferred the property to Mr. Obure and that the 3rd Defendant confirmed that there were no records showing that a Certificate of Lease had been issued to the Plaintiff.
 54. The 3rd Defendant's counsel submitted that according to the evidence by Eric Abwao, the Plaintiff is not the owner of Plot No 81 and consequently the lease issued to the Plaintiff is fraudulent and that the Plaintiff failed to produce an allotment letter issued by the 3rd Defendant and failed to explain how she came to apply for the lease.
 55. It was submitted that there were several anomalies with the lease, the same having been received at the land registry on 27th October 2001 although executed on 27th December 2001 and that at the time of payment of stamp duty, M.N Ngethe had not executed the lease on behalf of the City Council of Nairobi.

Analysis and Determination

56. Having considered the pleadings, testimonies and submissions herein, the issues that arise for determination are:-
 - a. Whether the lease was fraudulently issued to the Plaintiff
 - b. Whether the prayers sought by the parties should be granted.
57. This suit raises the question of the legal ownership of Plot 81 of Jamhuri Phase II, Nairobi, which was later registered as Nairobi Block 63/643. The Plaintiff avers that she was the original allottee of the suit land, through an allotment letter issued to her on 10th February 1992 and that she fulfilled the conditions in the letter of allotment and was issued with a Certificate of Lease on 27th December 2001.



58. On the other hand, the 1st and 2nd Defendants have raised a counterclaim in which they aver that they are the legal owners of Plot No 81 and that the original allottee was in fact Julia Makunda Isoyi, who sold her interest to David Onsongo Obure in 1999, who thereafter sold his interest to the Defendants on 29th April 2002. It is the Defendants' case that the lease was issued to the Plaintiff fraudulently.
59. It is important to highlight that parties are bound by their pleadings. This principle serves to ensure that each party knows the case they are to meet and avoids trial by surprise. This position was upheld by the Court of Appeal in *Independent Electoral and Boundaries Commission & another v Stephen Mutinda Mule & 3 others* [2014] eKLR.
60. That being the case, the Plaintiff cannot purport to raise, through submissions, issues that are not rooted in his pleadings, particularly the objection that the counterclaim is time-barred under Section 7 of the *Limitation of Actions Act*.
61. The next issue I will address is whether a lease was fraudulently issued to the Plaintiff. According to Section 26 (1) of the *Land Registration Act* 2012, a certificate of title is to be taken by courts as prima facie evidence that the named proprietor is the absolute owner of such land. The title can however be challenged on grounds of fraud or misrepresentation to which the person is party to or where such title was acquired illegally, unprocedurally or through a corrupt scheme.
62. In this matter, the Plaintiff's title has been challenged on grounds of fraud. It is trite that allegations of fraud must not only be pleaded and particularized but must also be proved to a standard of proof that is higher than on a balance of probability. The Court of Appeal ably articulated these principles in *Moses Parantai & Peris Wanjiku Mukuru suing as the legal representatives of the estate of Sospeter Mukuru Mbeere (deceased) v Stephen Njoroge Macharia* (2020) eKLR;
- “In the instant case, the appellants needed to not only plead and particularize the fraud, but also lay a basis by way of credible evidence upon which the Court would make a finding that indeed there was fraud in the transaction leading to the transfer and registration of the suit land in the name of Janet all the way to the respondent. That the trio were parties to the fraud or had knowledge of it...Fraud is a quasi-criminal charge which must, as already stated, not only be specifically pleaded but also proved on a standard though below beyond reasonable double doubt, but above balance of probabilities.”
63. A similar finding was made in *Vijay Morjaria v Nansingh Madbusingh Darbar & another* [2000] eKLR where Tunoi JA stated that:-
- “It is well established that fraud must be specifically pleaded and that the particulars of fraud must be specifically pleaded and that the particulars alleged must be stated on the face of the pleadings. The acts alleged to be fraudulent must of course be set out and then it should be stated that these acts were done fraudulently. It is also settled law that fraudulent conduct must be distinctly alleged and as distinctly proved and it is not allowable to leave fraud to be inferred from the facts.”
64. The facts in this case are that the Plaintiff has obtained a Certificate of Lease for the suit property, which she asserts she was lawfully allocated. The 1st and 2nd Defendants have challenged the lease and allotment letter on grounds of fraud. The Plaintiff has equally challenged the validity of the Defendant's allotment letter.
65. This Court agrees with the Plaintiff's submission that a letter of allotment cannot defeat a validly issued certificate of title, unless the title was obtained fraudulently, by mistake or misrepresentation. This is



the position that the court took in the case of *Njuwangu Holdings Ltd v Langata KPA Nairobi & 5 others* [2014] eKLR where it held as follows:

“As matters now stand the Plaintiff who has a registered title over the suit property has a superior title to that of the 1st Defendant who only holds a letter of allotment. I am in agreement with the decision of the court of Appeal in the case of *Satya Investments Ltd v J.K. Mbugua* Civil Appeal No 164 of 2004, where the court held that a temporary occupation licence could not override a registered title under the *Registration of Titles Act* Cap 281 Laws of Kenya (repealed). Equally it is my view that a letter of allotment cannot override a duly registered title under the Act and where there is a registered title and a letter of allotment over the same property barring any fraud on the part of the party holding the registered title, a letter of allotment must of necessity give way. The rights of a party who holds the registered title have crystallized as opposed to those of the party holding a letter of allotment which are yet to crystallize.”

66. In the case of *Joseph Arap Ng'ok v Justice Moiwo Ole Keiwua* [1997] eKLR the Court of Appeal stated thus:

“It is trite law that such title to landed property can only come into existence after issuance of the letter of allotment, meeting the conditions stated in such letter and actual issuance thereafter of the title document pursuant to the provisions of the Act under which the property is held.”

67. In his testimony before this court, the Defendants' second witness gave evidence that the process of allocation begins by identifying land, then a part development plan (PDP) is prepared; an allotment number is then given, following which a survey is done and block numbers are issued. Thereafter, one picks a lease document which is signed between the County and the allottee. His testimony corresponds with the jurisprudence of this court.

68. In *Nelson Kazungu Chai & 9 others v Pwani University College* (2014) eKLR this court comprehensively considered the process through which a person obtains title to land through a letter of allotment as follows:

“It is trite law that under the repealed *Government Lands Act*, a Part Development Plan must be drawn and approved by the Commissioner of Lands or the Minister of Lands before any unalienated Government land could be allocated. After a Part Development Plan (PDP) has been drawn, a letter of allotment based on the approved Part Development Plan is then issued to the allottee.

It is only after the issuance of the letter of allotment, and the compliance of the terms therein, that a cadastral survey can be conducted for the purpose of issuance of a Certificate of Lease.”

69. Based on these authorities, to prove that one obtained title vide allocation, one has to present the letter of allocation accompanied by an approved PDP; proof of compliance with the special conditions therein; proof of survey and issuance of a land reference number. A lease duly signed by the county and forwarded to the Ministry of Lands with a forwarding letter is then issued.

70. The Plaintiff supported the validity of her title by presenting a copy of the letter of allotment dated 10th February 1992; a copy of a receipt of Kshs. 10,800/- for stand premium and ground rent dated 24th February 1992; a copy of the Lease dated 27th December 2001; a letter dated 21st September 2001



from the Nairobi City Council Town Clerk requesting registration of the lease document, including that of the Plaintiff and a copy of the Certificate of Lease for LR No Nairobi Block 63/643.

71. The evidence before this court confirms that the Plaintiff complied with the special conditions of the allotment letter. This is in contrast to the Defendants' receipts for payment of stand premium and ground rent which do not indicate the dates on which they paid.
72. By the 1st Defendant's own admission, the Defendants failed to make payments of the requisite stand premium between 2002 and 2013. Attached to DW4's report is a copy of the letter of allotment to Julia M. Isoyi. Upon consideration of the letter of allotment, it is clear that Ms. Isoyi was not in fact the first allottee. The letter of allotment was purportedly transferred to her by Grace Wamirwa by way of endorsement on 13th March 1992.
73. It is also apparent that the letter of allotment issued to Ms. Isoyi was issued after the Plaintiff had received her letter of allotment on 10th February 1992 and after she had fulfilled the special conditions therein on 24th February 1992. This therefore means that as at 13th March 1992, when the letter of allotment was purportedly transferred to Ms. Isoyi, the land in question was no longer available for allotment, making the said transfer void ab initio.
74. The Defendants also failed to tender any evidence to prove that Ms. Isoyi paid the stand premium and ground rent within 30 days of the transfer to her. Therefore, even if the allotment letter was validly issued, upon the expiry of the thirty days' notice, the letter of allotment lapsed, and the land could be re-allocated to someone else. As a party cannot transfer a better title than what she has, Julia Isoyi could not have transferred good title to David Onsongo Obunde to enable him sell the land to the 1st and 2nd Defendants.
75. The finding of the invalidity of the Defendant's allotment letter corresponds with the Plaintiff's evidence that the signature on the letter, alleged to have been made by Zipporah Wandera, was forged. PW2 testified that upon conducting tests at the DCI, they established that the signature on the Defendants' allotment letter did not match the known signature of Zipporah Wandera.
76. The Plaintiff also established that Ms. Wandera was on compulsory leave on the date that the letter was purportedly signed, which was 20th December 1999. This was proved by way of a response of the Human Resource at City Hall dated 29th October 2019 and the minutes from City Hall which at page 1279 indicate that J Ong'ele took over from Z. Wandera on the same day she was sent on compulsory leave.
77. The Defendants have highlighted the inconsistencies in the dates on the Lease and Certificate of Lease. While the Certificate of Lease was signed on 27th October 2001, the Lease between the Plaintiff and the 3rd Defendant is dated 27th December 2001. The Defendants argue that this inconsistency establishes that the lease was fraudulently acquired.
78. This court is not persuaded that this alone constitutes fraud. This is especially based on the documentary evidence that the Plaintiff has produced to support her title.
79. As this court has found that the Plaintiff has established that he lawfully obtained the Certificate of Lease to the suit property, and that the 1st and 2nd Defendants do not have a valid claim to the suit land, the Plaintiff's case succeeds and the 1st and 2nd Defendants' counterclaim fails.
80. The Plaintiff's claim thereby succeeds and the following reliefs are granted:



- a. A permanent injunction be and is hereby issued against the Defendants whether by themselves, their respective servants, agents and employees from entering, trespassing, remaining in possession or constructing on all that piece of land known as LR No Nairobi/ Block 63/643.
- b. An eviction order to the Defendants by themselves, their respective servants, agents and or employee and removal of all illegal structures on all that parcel of land known as LR No Nairobi/ Block 63/643 is hereby issued.
- c. Costs of the suit to be borne by the 1st and 2nd Defendants.

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 4TH DAY OF MAY, 2023.

O. A. ANGOTE

JUDGE

In the presence of;

Ms Leah for Otieno for the Plaintiff

Mr Wabela for the 1st Defendant

Mr. Achoki for 3rd Defendant

Court Assistant - June

