



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MALINDI**

**ELC CASE NO. 25 OF 2018**

**JOEL KAZUNGU YAA MANGI.....PLAINTIFF**

**VERSUS**

**DIRECTOR OF LAND ADJUDICATION & SETTLEMENT.....1<sup>ST</sup> DEFENDANT**

**LAND REGISTRAR KILIFI.....2<sup>ND</sup> DEFENDANT**

**DAVID RODNEY GREEN.....1<sup>ST</sup> INTERESTED PARTY**

**DEBORAH RODNEY GREEN.....2<sup>ND</sup> INTERESTED PARTY**

**JUDGMENT**

**BACKGROUND**

1. By the Plaint dated and filed before the Kilifi Principal Magistrate Court on 22<sup>nd</sup> September 2014, Joel Kazungu Yaa Mangi (the Plaintiff) prays for Judgment against the two (2) Defendants for:-

***a) A declaration that a lease dated 22<sup>nd</sup> July 1974 to Cornel Paul Okech entered in the encumbrance Section of LR No. 182 Mtondia is obsolete and a nullity;***

***b) A mandatory injunction directed at the 1<sup>st</sup> Defendant to forthwith accept purchase payment of Kshs 32,801/- in respect of Plot No. 182 Mtondia Settlement Scheme;***

***c) An order directed at the 1<sup>st</sup> Defendant to document Plot No. 182 accordingly and surrender all particulars to the 2<sup>nd</sup> Defendant to enable him issue title documents to the Plaintiff;***

***d) Costs of this suit.***

2. It is the Plaintiff's case that he is the lawful allottee of the said Plot 182 situated at Mtondia Settlement Scheme, Kilifi measuring approximately 5.26 Ha. He asserts that on 15<sup>th</sup> September 2014, he tendered to the Director Land Adjudication and Settlement (the 1<sup>st</sup> Defendant) the requisite fee for the land being Kshs 32,801/- but the 1<sup>st</sup> Defendant declined to accept the same.

3. The Plaintiff avers that he has since received a letter from the 1<sup>st</sup> Defendant dated 2<sup>nd</sup> September 2014 asking him to surrender the Original Letter of Offer pending conclusive resolution in regard to a lease over the said Plot.

4. In a Statement of Defence dated 3<sup>rd</sup> November 2014 filed on their behalf by the Honourable the Attorney General, the Director Land Adjudication and Settlement and the County Land Registrar Kilifi (the 1<sup>st</sup> and 2<sup>nd</sup> Defendants respectively) deny the Plaintiff's claim and aver that upon perusal of all the documents in their records, it is clear that the suit property was first registered under a leasehold tenureship on 22<sup>nd</sup> July 1974 against one Cornel Paul Okech.

5. The Defendants further aver that on 21<sup>st</sup> January 1999, Christopher O. Okech and John Odhiambo Okech were both registered under personal representatives and a Certificate of Lease was issued to them on the same day. Subsequently on 30<sup>th</sup> April 1999, the lease was transferred to David Rodney Green and Deborah Jane Greed and a Certificate of Lease was registered in their names on the same day. On

28<sup>th</sup> January 2011, the title was closed on mutation and a register Nos. 1178, 1179, 1180 and 1182 were opened.

6. The Defendants aver however on a without prejudice basis that on 25<sup>th</sup> February 1981, the Government transferred the suit property to the Settlement Fund Trustees (SFT) for proper administration. Thereafter, one of the leasehold beneficiaries applied to the 1<sup>st</sup> Defendant for re-allocation on 6<sup>th</sup> January 2010.

7. Subsequently, by an application dated 2<sup>nd</sup> December 2014, the said David Rodney Green and Deborah Jane Green applied to be enjoined in the suit on the basis that they were the registered proprietors thereof having purchased the same on 8<sup>th</sup> January 1999. That application was allowed on 17<sup>th</sup> February 2015 and the Court directed them to file their Statement of Defence to the Plaintiff's claim as the 3<sup>rd</sup> and 4<sup>th</sup> Defendants respectively.

8. By their Statement of Defence dated and filed herein on 10<sup>th</sup> March 2015, the 3<sup>rd</sup> and 5<sup>th</sup> Defendants aver that they are the registered proprietors of Plot No. Kilifi/Mtondia/182 having purchased the same on 8<sup>th</sup> January 1999 and obtained a Title thereto on 30<sup>th</sup> April 2013.

9. Thereafter, following a Preliminary Objection by the 3<sup>rd</sup> and 4<sup>th</sup> Defendants in regard to the jurisdiction of the Kilifi Principal Magistrates Court, the suit was transferred to this Court on 21<sup>st</sup> February 2018 for hearing and disposal.

### **THE PLAINTIFF'S CASE**

10. The Plaintiff (PW1) testified as the sole witness in his case and adopted his Statement dated and filed herein on 22<sup>nd</sup> September 2014. PW1 told the Court that he is a beneficiary of a Letter of Offer dated 25<sup>th</sup> August 2014 in respect of Plot No. 182 Mtondia Settlement Scheme. That letter required him to pay at least a 10% deposit and/or 100% outright Purchase fee to the 1<sup>st</sup> Defendant to enable completion of documentation.

11. PW1 testified that by a Letter dated 2<sup>nd</sup> September 2014, the 1<sup>st</sup> Defendant had instead asked him to surrender to them the Letter of Offer citing an anomaly on the Green Card over an alleged existing Lease. The 1<sup>st</sup> Defendant has also through that letter advised its Kilifi County Office not to accept any payment from PW1 in regard to the property.

12. PW1 told the Court that he has since carried out a search and noticed that the lease allegedly registered on 22<sup>nd</sup> July 1974 in favour of Cornell Paul Okech was a forgery. The said Plot was on 20<sup>th</sup> February 1981 lawfully transferred by the Government to the Settlement Fund Trustees (SFT). PW1 further told the Court that the 3<sup>rd</sup> and 4<sup>th</sup> Defendants' Certificate of Title issued on 13<sup>th</sup> April 1999 is a forgery and that the purported sub-division thereof is thus a nullity.

13. PW1 told the Court that it was in light of those discrepancies that he had since declined to surrender the Letter of Offer and urges the Court to compel the 1<sup>st</sup> Defendant to forthwith accept the payment for the suit property and to register him as the owner thereof.

14. During cross-examination, PW1 told the Court that the land initially belonged to his father who then passed it to his aunt. His father did not however have any documents of ownership. He further told the Court that he lived on the land for about one year in 1985. He however vacated it in 1986 when the Defendants threatened him.

### **THE DEFENCE CASE.**

15. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants did not call any witness at the trial. On their part, the 3<sup>rd</sup> and 4<sup>th</sup> Defendants called one witness.

16. DW1-Deborah Jane Green is the 4<sup>th</sup> Defendant herein. He told the Court that the 3<sup>rd</sup> Defendant is her husband with whom they jointly owned the suit property. Adopting her Statement dated and filed herein on 10<sup>th</sup> March 2015, DW1 told the Court that they purchased the 14 acres parcel of land from John Odhiambo Oketch and Christopher Okech who were the Administrators of the Estate of the previous owner, the late Cornell Paul Okech. It was then transferred to their names on 30<sup>th</sup> April 1999.

17. DW1 further told the Court that at the time of the purchase, the vendors paid compensation to some three(3) individuals who had occupied portions of the property on 5<sup>th</sup> February 1999 as follows:-

*i) Karisa Katana Zarume Kshs 70,000/-*

*ii) Charles Mwambire Kigombe Kshs 20,000/-*

*iii) Kavumbi Baya Thoya Kshs 55,000/-*

18. DW1 testified that Cornell Paul Okech was allocated the land by the Government on 1<sup>st</sup> January 1971 and that the same was registered on 28<sup>th</sup> June 1974.

### **ANALYSIS AND DETERMINATION**

19. I have perused and considered the pleadings filed herein, the oral testimonies of the witnesses who testified before me and the evidence

adduced at the trial. I have equally considered the submissions and authorities placed before me by the Learned Advocates for the 3<sup>rd</sup> and 4<sup>th</sup> Defendants. The Plaintiff did not file any submissions.

20. The Plaintiff sought for orders declaring as obsolete and a nullity a lease dated 22<sup>nd</sup> July 1974 in the name of one Cornel Paul Okech entered in the encumbrance Section of the title for Plot No. 182 Mtondia Settlement Scheme. He further urged this Court to issue a mandatory injunction directing the 1<sup>st</sup> Defendant to accept his payment of the said property and for the 2<sup>nd</sup> Defendant to proceed to issue title in his name.

21. The Plaintiff filed this suit at the Kilifi Principal Magistrates Court wherein he sued only the 1<sup>st</sup> and 2<sup>nd</sup> Defendants. As it turned out and by an application dated 2<sup>nd</sup> December 2014, the 3<sup>rd</sup> and 4<sup>th</sup> Defendants (also referred to as Interested Parties) sought to be enjoined in the suit on the basis that they were the registered proprietors of the suit property. That application sailed through unopposed and was allowed on 17<sup>th</sup> February 2015.

22. As it happened, the Plaintiff did not amend his claim thereafter to include any claim against the newly admitted Defendants. Similarly, the 3<sup>rd</sup> and 4<sup>th</sup> Defendants other than asserting that they were the registered proprietors of the property did not make any counterclaim against the Plaintiff save for urging the Court to dismiss the Plaintiff's suit.

23. The gist of the Plaintiff's claim is that he applied to the Government to be allocated the suit property. By a Letter of Offer dated 25<sup>th</sup> August 2014, the Government duly allocated him the said property. However, when he sought to pay the deposit required therefor, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants herein declined to accept the payment and instead asked him to surrender the Letter of Offer.

24. It is the Plaintiff's case that the said refusal and purported withdrawal of the Letter of Offer is wrongful and unwarranted and hence the orders sought herein.

25. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants did not call any witness at the trial herein. They however denied in their Statement of Defence as filed herein by the Honourable the Attorney General, that the Plaintiff was a lawful allottee of the land and/or that they had urged him to surrender his Letter of Offer as alleged. In some of the most interesting, if confusing pleadings, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants aver after the general denials as follows at Paragraphs 4 to 8 of their Statement of Defence filed herein on 4<sup>th</sup> November 2014:-

***4. In the alternative and without prejudice to the aforesaid, the Defendants aver that upon perusal of all the documents in their records, it is clear that the suit property was first registered under a leasehold tenureship on 22<sup>nd</sup> July 1974 against Corbel Paul Okech of P.O. Box 29 Kilifi. On 21<sup>st</sup> January 1999, Christopher O. Okech and John Odhiambo Okech were both registered under personal representatives and a Certificate of Lease of Title was issued to them on the same day.***

***5. That further and without prejudice to the foregoing, the lease was transferred to David Rodney Green and Deborah Jane Green on 30<sup>th</sup> April 1999 and a Certificate of Lease was registered in their names on the same date. Thereafter, on 28<sup>th</sup> January 2011, the Title was closed on mutation and new register Numbers; 1178, 1179, 1180 and 1182 were opened.***

***6. The Defendants herein further and without prejudice to the foregoing state that the Government of Kenya as the first registered proprietor had however on 25<sup>th</sup> February 1981 transferred the suit property to the Settlement Fund Trustees, Nairobi for proper administration. This was done notwithstanding the few lease titles already issued out by the Government. One of the leasehold beneficiaries applied to the Director of Land Adjudication and Settlement for re-allocation of the same land on freehold tenureship vide a Letter dated 6<sup>th</sup> January 2010.***

***7. Further and without prejudice to the foregoing, the Defendants further state that on 26<sup>th</sup> February 2013, both leasehold proprietors willingly addressed the District Land Registrar Kilifi enclosing their leasehold Titles for surrender and requesting for Copies of existing records and this letter was copied to the Commissioner of Lands, Nairobi, District Commissioner Kilifi and District Land Adjudication and Settlement Officer, Kilifi vide a Letter dated 26<sup>th</sup> February, 2013.***

***8. The Defendants herein without prejudice to the foregoing further state that, it is clear from the foregoing that the Plaintiff in this civil suit had never been a party in the copy applications (sic) for re-allocation to the Director Land Adjudication and the said willingness on surrender of the leasehold Title in exchange of request for allocation by the Director Land Adjudication and Settlement."***

26. While the 1<sup>st</sup> and 2<sup>nd</sup> Defendants generally deny that the suit property was allocated to the Plaintiff as he contends, the Plaintiff produced at the trial herein a Letter of Offer from the 1<sup>st</sup> Defendant dated 25<sup>th</sup> August 2014(Pexh 1) wherein the then Director Land Adjudication and Settlement Esther N. Ogega addressed the Plaintiff as follows:-

**"RE: SETTLEMENT PLOT-LETTER OF OFFER**

***I am pleased to inform you that your application for a Settlement plot has been successful.***

***The Government through the Settlement Fund Trustees has offered you Plot No. 182 of approximately 5.2 Ha at Mtondia Settlement Scheme in Kilifi County.***

***In pursuant thereto, please note that you are required to report to the District Land Adjudication and Settlement Officer, Kilifi***

County so that you are shown the plot boundaries and be issued with a Letter confirming this before documentation.

***This offer is valid for 90 days from the date of this Letter. Within this period, you should pay the 100% outright purchase (Kshs 32,801) or 10% deposit (Kshs 3,280.10) for the plot and be documented accordingly, failure to which will lead to cancellation of the offer without further notice.***

27. When he went to make the payments in accordance with the Letter of Offer however, the Plaintiff was met with another Letter (Pexh 2) signed on behalf of the 1<sup>st</sup> Defendant by one PK Mwangi and dated 2<sup>nd</sup> September 2014 (a week after the first letter) addressing him as follows:-

**“RE: PLOT NO. 182 MTONDIA SETTLEMENT SCHEME**

***On 25<sup>th</sup> August 2014, you were issued with a Letter of Offer for Plot 185(sic) Mtondia, based on a ground report prepared by the District Land Adjudication and Settlement Officer and a Letter confirming surrender of lease from the District Land Registrar.***

***We have however noted that the lease is still reflected in the Green Card in Kilifi Land Registry and the land has been subdivided into five parcels. In this circumstance, we cannot proceed to process the offer to you until the circumstances surrounding the existing lease in a Settlement Scheme are fully investigated and records cleared.***

***I am therefore requesting you to surrender the Original Letter of Offer until the issue of the existing lease is resolved.***

***By a Copy of this Letter, I am instructing the District Land Adjudication and Settlement Officer not to accept any payments for the Plot.”***

28. This second letter was copied to among others, an unnamed Acting Lands Secretary with instructions to “Please investigate the existing lease and surrender”. Based on this letter, the Plaintiff was stopped from making the requisite payments for the suit property and by their failure to testify herein, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants declined to seize the opportunity to explain to the Court the findings if any, of their investigations into the circumstances how the lease came to be in a Settlement Scheme as per the instructions given to the Acting Lands Secretary.

29. The Plaintiff told the Court that when his attempts to pay for the suit property were turned down, he opted to carry out a search and to find out why the 1<sup>st</sup> Defendant appeared to change his mind on his Letter of Offer. By a letter dated 5<sup>th</sup> September 2014 (“Pex b 3”), he wrote to the 2<sup>nd</sup> Defendant Land Registrar seeking to ascertain the status of the property and if indeed it fell under the Settlement Fund Trustees. The 2<sup>nd</sup> Defendant then released to him a number of documents on their record.

30. Among those documents is a copy of a Transfer of Land executed on 30<sup>th</sup> January 1981 by the Commissioner of Lands and registered on 25<sup>th</sup> February 1981. By the said Transfer and as confirmed at paragraph 6 of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants’ Statement of Defence, the Government of Kenya transferred Title No. Mtondia/Settlement/Scheme/182 to the Settlement Fund Trustees in order to “enhance proper estate administration.”

31. That transfer is indeed confirmed by a Copy of a Green Card issued the same day (Pexh 11) indicating at Entry No. 7 that the Government was registered as the proprietor of the land on 22<sup>nd</sup> July 1974 and that under Entry No. 2, the registered proprietor on 25<sup>th</sup> February 1981 was the Settlement Fund Trustees.

32. According to the 3<sup>rd</sup> and 4<sup>th</sup> Defendants, the suit property was on the same year 1974 allocated to Cornel Paul Okech. They produced in Court as evidence a Copy of a Lease registered as such on 22<sup>nd</sup> July 1974. I have studied the said document. While the Title at the top is shown as No. 182 Mtondia Settlement Scheme, the main text therein reads as follows:-

***“The President of the Republic of Kenya on behalf of the Government of the Republic of Kenya in consideration of the sum of Shillings Two Hundred and Fifty (Shs 250/-) by way of stand premium paid on or before the execution hereof.***

***Hereby leases to Cornel Paul Okech (hereinafter called “the Lessee”) of Kilifi (Post Office Box Number 29)***

***All that piece of land comprised in the above-mentioned title 566/D Tezo-Roka Settlement Scheme for the term of ninety-nine(99) years from 1<sup>st</sup> day of January 1971.....”***

33. As it were, no evidence was led by the 3<sup>rd</sup> and 4<sup>th</sup> Defendants as to the relationship between the said Title No. 566/D Tezo-Roka Settlement Scheme and the suit property herein established in a different, Mtondia Settlement Scheme.

34. The 3<sup>rd</sup> and 4<sup>th</sup> Defendants further assert that they purchased the suit property from John Odhiambo Okech and Christopher Okech who are described in the pleadings as the Administrators of the estate. A perusal of the Sale Agreement dated 8<sup>th</sup> January 1999 reveals that the two vendors were the Administrators of one Bernadatte Consolata Otieno (Deceased). Clauses 1 to 5 of the Agreement which mentions the purchase price at Kshs 150,000/- per acre gives the terms thereof as follows:

***1. The Purchasers shall pay the Vendors a deposit of ten per cent (10%) of the Purchase price upon receiving the consent from the Land Control Board.***

**2. The Purchasers shall pay a further sum of Kshs 7,500/- being part of the purchase price which said sum shall be payable to the Mtondia Settlement Officer.**

**3. The balance of the purchase price shall be paid to the Vendors upon completion of the registration and transfer in the Purchaser's favour.**

**4. It will be the duty and obligation of the Vendors to obtain the land rent certificate together with the consent from the Land Control Board for the transfer of the said property.**

**5. The Vendors undertake to do everything to give effect to the completion and due registration of a valid transfer in favour of the Purchaser and/or his/her nominee/s."**

35. The two Vendors were neither parties to this suit nor were they called to give evidence herein. The result is that there was no clear explanation given as to the relationship between the said Bernadatte Consolata Atieno whose estate they were the Administrators and the suit property or the said leasehold owner Cornel Paul Okech.

36. This Court found it curious that the Vendors were only to be paid a deposit after they obtained the Land Control Board Consent and the balance of the Purchase price after they completely transferred the suit Property. It was even more curious that Clause 2 of the Sale Agreement required an unnamed Mtondia Settlement Officer to be paid Kshs 7,500/-. In her testimony before the Court, DW1 did not offer any explanation for this payment.

37. Ultimately indeed, there was no evidence of any payment made either to the Vendors or the said Settlement Officer in consideration for the suit property which was registered in the 3<sup>rd</sup> and 4<sup>th</sup> Defendants names on 13<sup>th</sup> April 1999. While the Agreement stipulated that a 10% deposit would be paid upon obtaining Land Control Board Consent and the balance upon the transfer, the Defendants did not produce anything before me to demonstrate that they had in fact passed any consideration before acquiring the title.

38. Given the fact as acknowledged by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants in their pleadings that the property had been transferred by the Government to the Settlement Fund Trustees in 1981, it was incumbent upon the 3<sup>rd</sup> and 4<sup>th</sup> Defendants to demonstrate clearly how they came to acquire title to the suit property.

39. During her cross-examination herein DW1 conceded that as at the time they purchased it, they were aware that the suit property lies within Mtondia Settlement Scheme. It is not lost to this Court that such Schemes were established by the Government with the aim of settling displaced persons or to provide landless families and squatters with land.

40. In that respect, the Settlement Fund Trustees (SFT) was established as a body corporate pursuant to the provisions of Section 167 of the Agriculture Act, Cap 318 of the Laws of Kenya. Under the said Act, the Trustees were mandated to settle persons on either unalienated Government land or on land purchased from private owners by the Settlement Fund Trustees. Any land held by the Settlement Fund Trustees is public land until such a time that the process of allotment is completed and the purchase price is paid.

41. Accordingly it was pertinent for the 3<sup>rd</sup> and 4<sup>th</sup> Defendants to explain and demonstrate when exactly the subject matter ceased to be Settlement Fund Trustees land after 1981 when the Fund was registered as the proprietor of the land. They did not do so.

42. Indeed from the material on record, it was evident that the 3<sup>rd</sup> and 4<sup>th</sup> Defendants were not only aware of the tenuous nature of their title but that they recognised that the suit property was public land lawfully under the administration of the Settlement Fund Trustees. While they did not give any testimony at the trial, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants had on 11<sup>th</sup> March 2015 filed a List of Documents that were in their possession and which they intended to rely on at the trial. Those documents underlie the interesting pleadings by the two Defendants as I have alluded to hereinabove.

43. Given that the List of 12 Documents had been filed herein and were part of the record though not produced formally as evidence, one would have expected the 3<sup>rd</sup> and 4<sup>th</sup> Defendants to make some reference thereto and to deny and/or explain their context. The 3<sup>rd</sup> and 4<sup>th</sup> Defendants did not however make any reference to the same.

44. The documents reveals that by a Letter dated 6<sup>th</sup> January 2010, the 3<sup>rd</sup> Defendant wrote to the 1<sup>st</sup> Defendant herein as follows:-

**"REF: Application of Plot No. 182 Mtondia Settlement Scheme**

***I am a Kenya Citizen aged 68 years living with my family of ten (10) people on Plot No. 182 Kilifi –Mtondia.***

***I have been living here for the last 22 years and besides developed the plot, with all sorts of fruits, trees, coconut palms, casuarina trees etc.***

***Sir, I need to pay for the settlement fund trustees monies in order to be documented and get my title deed as required by the Settlement Act.***

***I hereby hope and pray that my application reach your sympathetic consideration."***

45. Again on 26<sup>th</sup> February 2013, the 3<sup>rd</sup> and 4<sup>th</sup> Defendants jointly wrote to the 2<sup>nd</sup> Defendant herein as follows:-

**REF: Purchase of Freehold Interest on LR No. Kilifi/Mtondia/182**

**We Proprietors of the leased title referred above do hereby apply for the purchase of freehold interest on our land-referred above.**

**The Plot is on a Settlement Scheme Kilifi/Mtondia/182.**

**Sometime before the Scheme was introduced the Commissioner of Land(s) had issued the Plot with a lease Certificate and when the Scheme was introduced (sic). The Commissioner transferred the same to the Settlement Fund Trust and a transfer from was affected and a file for the land is on record at the Settlement Scheme/Adjudication Department.**

**Sir, so far the Commissioner then signed the transfer. We are ready to surrender the lease Certificate back to the Commissioner to cancel the same in order to pay the government monies so that we can be discharged and be issued with a freehold title as required for agricultural purposes.**

**Sir, we please are applying for certified true copies of the lease and transfer to enable us be discharged by the Director of Land Adjudication and Settlement.”**

46. Contrary to the assertion in the first letter dated 6<sup>th</sup> January 2010 that the 3<sup>rd</sup> and 4<sup>th</sup> Defendants had been living on the suit property for 22 years, DW1 testified herein that they do not reside on the suit property as they have their house on Plot No. 181. She however told the Court that they use the land for fruit farming and have put a bougainvillea fence around it.

47. That the 3<sup>rd</sup> and 4<sup>th</sup> Defendants do not reside on the suit property is indeed confirmed by a letter from the Kilifi District Land Adjudication & Settlement Officer Felix M Kilelo dated 27<sup>th</sup> June 2014 addressed to the 1<sup>st</sup> Defendant (Pexh 9) wherein he states that the Squatter on the ground is the Plaintiff and urges the 1<sup>st</sup> Defendant to favourably consider and allocate to him the Plot.

48. Arising from the foregoing and given the subsequent issuance of a Letter of Offer dated 25<sup>th</sup> August 2014 to the Plaintiff by the 1<sup>st</sup> Defendant, it is my view that there was a legitimate expectation by the Plaintiff that he was entitled to be issued with title documents upon compliance with the conditions set out in the Letter of Offer.

49. As was stated by the Supreme Court *in Communications Commission of Kenya & 5 Others –vs- Royal Media Services & 5 Others:-*

*“Legitimate expectation would arise when a body, by representation or by past practice, has aroused an expectation that is within its power to fulfill. Therefore, for an expectation to be legitimate, it must be founded upon a promise or practice by the public authority that is expected to fulfill expectations.”*

50. In flagrant violation of the expectation, the 1<sup>st</sup> Defendant has proceeded to stop the Plaintiff from paying the purchase price for the suit property and thereby having the documentation for title thereof issued in his name. Arising from the circumstances outlined hereinabove, it is evident that the 1<sup>st</sup> Defendant’s letter dated 2<sup>nd</sup> September 2014 stopping the further processing of the property to the Plaintiff was irregular, unprocedural and actuated by ulterior considerations.

51. In the premises, I am persuaded that the Plaintiff’s suit has merit. The same is allowed with costs as prayed in the Plaintiff.

**Dated, signed and delivered at Malindi this 6<sup>th</sup> day of May, 2020.**

**J.O. OLOLA**

**JUDGE**