



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC SUIT NO.1003 OF 2013

MARY MUKAMI KARIITHI.....PLAINTIFF

-VERSUS-

DENTOPAK AGENCIES LIMITED.....1ST DEFENDANT

CLLR. JOSEPHAT KIRAGU WAICHAHI.....2ND DEFENDANT

NAIROBI CITY COUNTY.....3RD DEFENDANT

JUDGEMENT

1. This is the plaint dated 19th day of July 2013. Vide the order of this court dated 22nd January 2016, the decision in this suit shall apply to other related suits namely; ELC No's 1113 of 2013, 1114 of 2013, 115 of 2013, 1116 of 2013, 1424 of 2013, 1451 of 2013, 1452 of 2013, 595 of 2014, 474 of 2013, 747 of 2014, 748 of 2014, 749 of 2014, 750 of 2014, 751 of 2014, 752 of 2014, 753 of 2014 and 464 of 2014.

2. The Plaintiff prays for judgement against the Defendant for:-

a. An injunction restraining the Defendants whether by themselves, their servants or agents or anybody claiming their authority or otherwise howsoever from interfering with the Plaintiff's parcels of land known as Land Reference No.209/7260/189(formerly plot ES 9 Eastleigh Sewerage Depot).

b. A declaration that the Plaintiff is the lawful owner of that parcel of land known as Land Reference No.209/7260/189 (formerly plot ES 9 Eastleigh Sewerage Depot).

c. Costs of this suit.

d. Any other or further relief this court may deem fit and just to grant.

The Plaintiff's case

3. The Plaintiff's case is that she is the bona fide owner of the suit property having bought it from the original allottee one Monicah Gathoni Karanja, but she has completely been unable to develop it owing to frustrations from the Defendants who have denied her peaceful and quiet possession of the suit property and deprived her the right to occupy it by sending vigilantes to drive her from the property.

The 1st & 2nd Defendant's case

4. The 1st & 2nd Defendant's case is that it is the registered owner of the suit property having bought it from one Charles Kanyi Wambugu. They also claimed that the said Wambugu was the original allottee and not Monicah Gathoni Karanja as claimed by the plaintiff.

The 3rd Defendants case

5. Vide its statement of defence dated 27th June 2014, the 3rd Defendant denied all the allegations contained in the plaint and contended that the parcel of land known as **Land Reference No.209/7260/189 (formerly plot ES 9 Eastleigh Sewerage Depot)** does not exist and put the Plaintiff to strict proof.

The Evidence of the Plaintiff

6. PW1, Mary Mukami Karithi, the Plaintiff gave her evidence in chief on 30th June 2014. She stated that she bought the suit property from Monica Gathoni on 17th May 2005. She further stated that the Said Monica gave her the letter of allotment dated 13th December 1995 and that the transaction was witnessed by an advocate.

7. She further stated that she went to City Council where she paid Kshs.40,000/= and she was issued with a beacon certificate and she continued paying for the suit plot until 2012 when she was told that she can no longer pay for the suit plot because a letter had been written forbidding payments for the suit plot.

8. She added that she thought she was stopped because of a case which she filed together with her neighbors against the 2nd Defendant vide **CMCC NO.1796 of 2009** at Milimani for trespass.

9. It was her testimony that she was issued with a copy of the deed plan and she was awaiting title only to be told by one S.G Mwangi who was the City Council Surveyor that the original deed plan was missing but it was later found in possession of a person known to her.

10. She also stated that there are other many people who have filed suits claiming plots over the suit property as the 2nd Defendant who was a councilor in Eastleigh took over most of the plots.

11. She stated that she was in possession of the suit property until 2011 when the 2nd Defendant who was the area councilor willfully provided wrong information to the council general purpose committee meeting of 18th May 2011 which subsequently influenced the decision of the full council meeting and gave the Town Clerk authority to amend the list of allottees.

12. When cross-examined, she stated that her sale agreement was not stamped with stamp duty. She also stated that whenever she goes to the suit property, the 2nd Defendant sends people to eject her. She also stated that she did not pay stamp duty; she went to the City Council to pay stand premium. She also stated that she was not aware that the ES series plots did not exist. She further stated that she does not have receipts for rates and she was not given a rate clearance certificate. She added that the 1st Defendant's year of registration is 7th October 2010 yet Charles Kanyi sold to the 1st Defendant on 9th October 2008.

13. PW2, Nicholas Kabucho testified that he is among the people who bought plots bearing the ES series from an allottee issued with an allotment letter in 1995. He further stated that the persons who bought the ES series paid the 3rd Defendant and the allotment letters were endorsed with a transfer at the 3rd Defendant's offices. In his case, the seller; one David Were had already paid the 3rd Defendant in compliance with the allotment letter.

14. He stated that the 3rd Defendant surveyed the plots and he made payments for the deed plan but the deed plan disappeared from the survey office. He also stated that after survey, his plot became **L.R No.209/7260/196** while the Plaintiff's plot became **L.R No.209/7260/189**.

15. He also stated that they complained at the clerk's office and they wrote a letter to the commissioner of lands informing him that the deed plan was misplaced but they later learnt that some people wanted to take over the plots and the ES series plots were cancelled. He stated that he later learnt that the 2nd Defendant who is a former councilor allocated 10 plots to himself. It was his testimony that he searched the 3rd Defendant's record at the revenue office where there is a register and found that plot ES 16 still belongs to him. He also stated that he has not developed his plot as there are people on the ground who have chased them.

16. Cross-examined, he stated that decisions of Nairobi City Council were made in meetings and there would be minutes of the meetings which were attended by the mayor, elected officials and the executive. He further stated that the Plaintiff presented her building plans for consideration for approval. He was shown the resolution stating that the said plan be deleted from the agenda and the resolution stating that 'Any other plot bearing the ES series be deleted.' He stated that he challenged the said resolutions in court. He also stated that he is aware that there is a lease between the 1st Defendant and the 3rd Defendant and he seeks for its cancellation.

17. PW3, Jane Wairimu Mwangi adopted her witness statement dated 19th April 2014 as her testimony in chief. She stated that the suit premises was part of plots allocated to them vide allotment letters issued on diverse dates in 1995 either as original allottee or buying the same from original allottee. She further stated that in 2009, they were issued with beacon certificates and clearance certificates in respect of the plots but all the original deed plans disappeared while in custody of the 3rd Defendant. She also stated that some individuals who were not known to them started registering the plots in their names at the lands office prompting them to file **CMCC No.176 of 2009** jointly. She stated that they were in possession of the suit property until 2011 when the 2nd Defendant who was the councilor and one of the persons caught attempting to register the lost deed plans chased them away.

18. When cross-examined, she stated that she was not aware of the council meetings, the lease given to the 1st Defendant and she was also not aware that the ES series plots were cancelled. She stated that she stopped paying for rates in 2010 and her plots were ES 1,2,6,7,27,51,52 and 54. She stated that neither she nor her husband was a councilor. She added that she bought all the stated plots. She also stated that the plots were allocated by the 3rd Defendant and it had no power to cancel allocations without notice and that she was aware that the plots were subsequently re-allocated.

The Evidence of the 1st and 2nd Defendants

19. DW1; Joseph Kiragu Waichahi the 2nd Defendant testified on 26th April 2021. He told the court that the 1st Defendant is his company and he is the managing director. He stated that the 1st Defendant bought the suit property from the original allottee one Charles Kanyi Wambugu and that the 3rd Defendant granted it a lease. He also stated that he did not interfere with the alienation of the suit plots as claimed by the Plaintiff and further that that the plaintiff's claim that her plans were disapproved because of his influence are untrue as at the meeting of 7th October 2011 the Plaintiff's plans were not approved due to nonexistence of the plot.

20. He also stated that investigations done revealed that ES Series plots did not exist thus the suit property was not allocated to the Plaintiff as it did not exist. He Prayed that the plaint be dismissed with costs. He was not cross examined by the Plaintiff's counsel. He relied on his list of documents dated 19th May 2014.

The Evidence of the 3rd Defendant

21. DW3, Benson Ndegwa Gichohi, the 3rd Defendant's administrative officer testified on 26th April 2021. He stated that that the 3rd Defendant is the original lessee from the Government of Kenya of **L.R No. 209/7260** Eastleigh, Nairobi. He further stated that the land was the 3rd Defendant's water and sewerage depot prior to the said depot being decommissioned and transferred to Ruai.

22. He stated that the land was subdivided into 58 plots and the 3rd Defendant issued members of the public with allotment letters referenced plot 1-58. He added that the 3rd Defendant did not allocate the land with ES series number and when it emerged that there was an ES series list of allottees, investigations were conducted by the 3rd Defendant's Investigation and Information Department and that after proper consultation of the Director Legal Affairs, the then director of city planning, the chief valuer and the director of Investigation and information analysis it was concluded that plot ES series do not exist and all allocations bearing ES were cancelled vide town planning committee meeting held on 9th October 2008 and 15th October 2009.

23. He stated that the Part Development Plan (PDP) and the survey plan have been duly approved and they do not bear the ES series. He added that City Council of Nairobi issued a directive of 8th June 2012, stating that all plots with E Series Numbers were not recognized and any transaction involving them was a nullity. He also stated that that the 3rd Defendant stopped the Plaintiffs development since the letter of allocation upon which she bought the suit property did not emanate from the 3rd Defendant's office. He prayed that the suit be dismissed. He was not cross-examined.

The Plaintiff's submissions

24. Counsel for the Plaintiff submitted on the following issues:-

- a. Whether there was fraud in the acquisition of the suit property and whether the Plaintiff was a party to the fraud.**
- b. Whether the Plaintiff is a bonafide purchaser hence the rightful owner of the suit property.**
- c. Whether the 1st & 2nd Defendants acquired the suit property illegally through the aid of the 3rd Defendant.**

25. On the issue of fraud in the acquisition of the suit property, he submitted that that documents produced by the Plaintiff which are the sale agreement, the allotment letter with a transfer endorsed, beacon certificate and clearance certificate all demonstrate that the Plaintiff purchased the suit property.

26. He added that the Plaintiff's witnesses PW2 and PW3 corroborated her testimony that after having complied with the requisite conditions and procedures, a deed plan was drawn but it disappeared mysteriously while in the custody of the 3rd Defendant. He also submitted that whoever alleges fraud must particularize the fraud allegations and prove them as well but the 3rd Defendant did not prove any allegation levelled against the Plaintiff on account of fraud.

27. On whether the Plaintiff is a bonafide purchase, he submitted that the Plaintiff was an innocent purchaser for value as her advocates conducted due diligence and the documents relating to ownership of the suit property had no defects. She submitted further that there was no notice from the 3rd Defendant that plots bearing Nos ES 1-58 had been cancelled. He relied on the case of **Fletcher vs Peck 10 US 87(1870)** cited in **Eunice Grace Njambi Kamau and another vs The Honourable Attorney General & 5 Others ELC Civil Suit No.976 of 2012.**

28. On whether the 1st & 2nd Defendants acquired the suit property illegally through the 3rd Defendants he submitted that the allotment letter issued to Charles Kanyi who allegedly sold the suit property to the 1st Defendant was issued years after the original allotment was issued to Monica in 1995 and whom the Plaintiff purchased the suit property from. He further submitted that it beats logic for the 3rd Defendant to claim that it found out about fraudulent activities over the suit property almost 11 years later.

29. He also submitted that it is not enough to waive a certificate of title or lease to claim good title as the holder of a lease or certificate of title must demonstrate through evidence that the lease or certificate of title was properly acquired. He submitted that the 1st Defendant did not demonstrate that he acquired a good title save to claim that he is in possession of the lease to the suit property. He relied on the case of **Kenya Anti Corruption Commission vs Onliine Enterprises Limited & 4 Others [2019]e KLR** which was cited with approval in **Republic vs Minister For Transport & Communication & 5 Others Ex Parte Waa Ship Garbage Collector & 15 Others Mombasa HMCMA No.617 of 2003[200] 1 KLR (E&L) 563.**

30. On whether there was fraud in the acquisition of the suit property, he submitted that the Plaintiff demonstrated through evidence that she

bought the suit property from the original allottee.

The 1st & 2nd Defendants' submissions

31. They are dated 13th July 2021. Counsel for the 1st & 2nd Defendants submitted that the 2nd Defendants testimony in examination in chief and his documents produced thereof were not challenged by way of cross-examination. He also submitted that a letter of allotment remains an offer and once a lease has been registered in the name of the allottee an allotment can only exist for reference only and the court can only cancel the said lease upon clear and proven evidence of illegality and the Plaintiffs did not prove any fraud on the 1st & 2nd Defendants part thus the Plaintiff's claims remain to be mere unsubstantiated allegations. He also submitted that the injunctive orders sought by the Plaintiff fall short of the parameters set in the case of **Giela vs Cassman Brown (1973) E.A.**

The 3rd Defendant's submissions

32. They are dated 14th July 2021. Counsel for the 3rd Defendant submitted that the Plaintiff could not buy the suit property from the alleged previous allottee since an allotment letter is an offer and it does not confer any property rights to a person unless there is acceptance and payment of the stand premium and ground rent. He added that the payment made by the previous allottee 10 years after the allocation is a nullity. He relied on **Mbabu saw Mills Ltd V Attorney General (for and on behalf of the commissioner of lands & 2 others) [2014] e KLR**, and on the case of **Bubaki Investment Company Limited National Land Commission & 2 Others [2015] e KLR**.

33. He also submitted that the Plaintiff's claim that she bought the suit property from the original allottee was not backed by the said allottee since she did not testify. He added that a sale agreement is not proof of ownership. He also submitted that according to records held by the 3rd Defendant, the suit plot belongs to the 1st Defendant who has put up developments with the 3rd Defendant's approval.

34. I have considered the pleadings that the evidence on record. I have also considered the submissions filed on behalf of the respective parties and the authorities cited. The issues for determination are:-

- i. Whether the Plaintiff is the rightful owner of the suit property.**
- ii. Whether the 2nd Defendant's acquisition of the suit property was illegal and/or fraudulent.**
- iii. Is the Plaintiff entitled to the reliefs sought?**
- iv. Who should bear costs of the suit?**

35. The Plaintiff told the court that she bought the suit property from Monicah Gathoni Karanja, the original allottee, on the 17th May 2005. The said agreement is dated 17th May 2005. The suit property is described as Plot Number ES – 9 Eastleigh (Sewerage). She bought it for Kshs.800,000/-.

36. The letter of allotment to Monica Gathoni Karanja is dated 13th December 1995. It is in respect of Plot NO ES-9. Eastleigh (Sewerage) measures approximately 0.025 hectares. The stand premium to be paid is Kshs.40,000/=. The allottee was to give a written acceptance within 30 days of the said date. The Plaintiff has produced a receipt for payment of Kshs.40,000/- dated 16th May 2005. She has also produced a beacon certificate dated 26th July 2005. She told the court that the Deed Plan was later misplaced.

37. The Plaintiff now seeks that she be declared the lawful owner of LR NO 209/7260/189 (formerly Plot ES-9 Eastleigh (Sewerage)). It should be noted that a letter of allotment is an offer which is subject to acceptance of the conditions set out therein. The letter of allotment dated 13th December 1995 specifically required the said Monicah Gathoni Karanja to accept in writing within thirty (30) days the conditions set out in the said letter of allotment.

38. The Plaintiff relies on a payment receipt for Kshs.40,000/= dated 16th May 2005 which is about ten (10) years after the letter of allotment was issued. The beacon certificate is also dated 26th July 2005 which is more than ten years later. No letter of acceptance was produced by the Plaintiff to show that the original allottee accepted the conditions. In fact the said Monicah Gathoni Karanja was not called as a witness in this case.

39. It is now well settled law that a letter of allotment does not confer title to property. In the case of **Stephen Mburu & 4 Others vs Comat Merchants Ltd [2012] eKLR** was held that:-

“...From a legal stand point, a letter of allotment is not a title to property. It is a transient and is often a right or offer to take property”.

Similarly, in the case of **Evans Kafusi Mcharo vs Permanent Secretary, Ministry of Roads, Public Works and Housing and Another (2013) eKLR**, it was held that:-

“In making a distinction between petitioners who held letters of allotment and those who were registered proprietors of the land in question, this court in the case of John Mukora Wachuhi & Others vs Minister for Lands & Others, High Court Petition NO 82 of 2010 observed that the distinction is based on the fact that the right to property protected under the law and the constitution is afforded to registered owners of land; that a letter of allotment is not proof of title as it is only a step

in the process of allocation of land. The court relied in that regard on the position enunciated by the Court of Appeal in the case of Wreck Motors Enterprises vs The Commissioner of Lands and 3 Others Nairobi Civil Appeal No 71 of 1997, where the Court of Appeal stated as follows:-

“Title to land property normally comes into existence after issuance of a letter of allotment, meeting the conditions stated in such a letter and actual issuance thereafter of a title document pursuant to provisions held”.

40. There is nothing to show that the original allottee, Monicah Gathoni Karanja made any written acceptance within 30 days. The payment made ten (10) years later is a nullity. The alleged endorsed transfer on the allotment letter is not dated or stamped by any of the 3rd Defendant’s officials. I agree with the 3rd Defendant’s submissions that the offer to the original allottee lapsed by effluxion of time. In the case of **Bubaki Investment Company Ltd vs National Land Commission & 2 Others [2015] eKLR**, Mutungi J held:-

“If the offer is open and is not specific within what period it has to be accepted, I would agree with the authors that the revocation of the offer would have to be communicated to the offeree. However, where an offer has a specific time within which it has to be accepted, no communication of the revocation would be necessary as it simply would stand revoked on the expiry of the specific period. A time extension and/or allotment carried a specific time frame within which a written acceptance of the offer and payment of the charges thereto were to be made. The petitioner has not demonstrated it made a written acceptance of the offer and/or made payment within 30 days of the positing of the letter of offer or within 30 days of the date of the offer letter. It is incumbent of the petitioner to satisfy the court that it in fact accepted the allotment and made payment within the specified period. The import of that is because the letter of allotment provided that the offer would lapse within 30 days from the date of the offer. While the petitioner has argued that by virtue of condition (2) of the offer letter the period would run from the date the offer letter was posted, the petitioner has not shown that the letter was indeed posted and if so the date of posting noting that the letter could also have been hand collected and/or hand delivered. Even assuming the letter was posted, it would be expected that the letter would be posted within say 7 days of being signed to allow for any bureaucratic processes within the Ministry of Lands and hence the letter ought to have been at any rate posted by 6th June 1997 so that the latest date by which the petitioner could have accepted and effected payment was by 6th July 1997.

The petitioner did not effect payment until 8th September 1997 and there is no evidence that a formal written acceptance of the allotment was made as none has been exhibited. My view is that no acceptance and/or payment was made in accordance with the letter of allotment and therefore there was no compliance with the condition of the letter of allotment.

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In the present case I have held that the petitioner failed to comply with the terms of the letter of allotment and thus any act by the 1st and 2nd respondent in dealing with the suit property could not be fraudulent since the petitioner did not acquire any proprietary interest in the suit properly, he having not complied with the terms of the allotment. In the result it is my view that the petitioner lacks any cause of action to sustain this petition and it is my holding that no fundamental rights and/or other constitution rights of the petitioner have been violated and/or infringed as alleged by the petitioner. The petition lacks any merit and the same is ordered dismissed with no orders as to costs.”

41. It is the Plaintiff’s case that she is an innocent purchaser for value. That there was no notice from the 3rd Defendant that plots bearing Nos ES1-58 had been cancelled. That it is only when she followed up on the mysterious disappearance of the Deed Plans that she became aware.

42. It was the 3rd Defendant’s evidence that it was the original lessee of LR No 209/7260 Eastleigh. That the said property was originally its water and sewerage depot before it was transferred to Ruai Station hence it was decommissioned; that upon being decommissioned it was subdivided into 58 plots and allotted to individuals and residents. DW2 was categorical that the plots did not bear E-S series but LR No 209/7260 1-58. The 3rd Defendant through its investigation department confirmed that the genuine allottee were those with LR No 209/7260 1-58.

43. There are minutes from the then Nairobi City Council, Town Planning Committee meetings held on 9th October 2008 and 15th October 2009 showing that the plots bearing E-S series were an attempt to grab the land. This is confirmed by an internal memo dated 25th October 2011 from the Director, Investigation and Information Analysis to the Town Clerk. There is another memo dated 23rd July 2011 to the Director Legal Affairs confirming the above position. That the ES series plots had been cancelled.

44. There are minutes of the meeting held on 27th October 2011 by the Town Planning Committee in which it was resolved:-

“That Plot LR NO 209/7260/ES - 9, 1st street Eastleigh be deleted from the agenda and any other plot bearing the same LR NO and with series ES in the said area”.

45. This was communicated to the Plaintiff vide a letter dated 4th November 2011. The letter bears the City Council of Nairobi letter head. It is addressed to:-

“Mary Mukami Karuthi

C/o Arch. Nelson K. Mwaura (A1200)

P. O. Box 9733-00200

NAIROBI

RE: DISSAPROVAL OF BUILDING PLAN REG NO EZ 723 FOR PLOT

LR NO 209/7260/ES-9 EASTLEIGH

This is to inform you that during the Town Planning Committee meeting held on 27th October 2011, the above mentioned building plan was disapproved due to non-existence of the plot.

Signed

P. T. ODONGO

FOR TOWN CLERK”

This confirms that the same was communicated contrary to the Plaintiff’s claim that she was not notified. I find that she knew the plot did not exist as early as 2011.

46. From the foregoing it is hard to find that the Plaintiff is the lawful and/or rightful owner of the suit property. There are no minutes from the City Council of Nairobi backing the allocation of Plot E-S series. The plot known as ES-9 does not exist as per the 3rd Defendant’s records. I find that the Plaintiff has failed to prove that she is the lawful owner of the suit property.

47. DW1 on the other hand told the court that the 1st Defendant bought Plot 19 out of LR NO 209/7260 from Charles Kanyi Wambugu vide a sale agreement dated 9th October 2008 for Kshs.700,000/=. The said Charles Kanyi had a letter of allotment dated 21st September 2001. A beacon certificate was issued to the 1st Defendant on 4th November 2008.

48. It is the Plaintiff’s case that the 1st and 2nd Defendants acquired the suit property illegally and fraudulently. That the 1st Defendant has failed to demonstrate how it acquired the certificate of title. The Plaintiff on her plaint date 19th July 2013 did not plead any particulars of illegality and or fraud on the part of the Defendants. In the case of **Eunice Grace Njambi Kamau & Another vs The Honourable Attorney General & 5 Others ELC Civil Suit NO 976 of 2012** where the court cited the decision of Tunoi JA (as he then was) in **Vijay Morjoria vs Nansingh Madhusingh Darbar & Another [2000] eKLR** it was held that:-

“It is well established that fraud must be specifically pleaded and the particulars of the fraud alleged must be stated on the face of the pleading. 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.”

49. The 3rd Defendant has stated that the suit property belongs to the 1st Defendant as it issued a certificate of lease in favour of the 1st Defendant after it purchased from Charles Kanyi Wambugu who had been allocated Plot NO 19 Section III Eastleigh, Nairobi. From the foregoing, it is clear that the Plaintiff has failed to prove any fraud and/or illegality on the part of the 1st Defendant.

50. **Section 26 (1)** of the Land Registration Act, 2012 provides that:-

“The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except—

a. on the ground of fraud or misrepresentation to which the person is proved to be a party; or

b. where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.”

51. There is no evidence tendered by the Plaintiff to suggest that the certificate of lease in favour of the 1st Defendant was acquired through fraud, illegally, unprocedurally or through a corrupt scheme.

52. I find that the 1st Defendant was lawfully registered as the lessee of the said property. No evidence has been tendered by the Plaintiffs to demonstrate that the 3rd Defendant was influenced by the 2nd Defendant in any way, to issue the said certificate of lease.

53. Having found that the Plaintiff has failed to prove her case against the Defendants on a balance of probabilities she is not entitled to the reliefs sought. A look at the prayers on the plaint confirm that she did not seek the cancellation of the lease between the 1st Defendant and the 3rd Defendant. Her case must fail. The upshot of the matter is that the Plaintiff has failed to demonstrate that she deserves the orders sought in the Plaint. The issue of double allocation does not arise as the 3rd Defendant has denied issuing E-S series plots.

54. **Section 27** of the Civil Procedure Act provides that:-

“1. Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incidental to all suits shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by whom and out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid; and the fact that the court or judge has no jurisdiction to try the suit shall be no bar to the exercise of those powers:

Provided that the costs of any action, cause or other matter or issue shall follow the event unless the court or judge shall for good reason otherwise order.

2. The court or judge may give interest on costs at any rate not exceeding fourteen per cent per annum, and such interest shall be added to the costs and shall be recoverable as such.”

55. The Plaintiff will bear costs of the suit.

56. In conclusion the Plaintiff's suit is dismissed with costs to the Defendants.

It is so ordered.

DATED, SIGNED AND DELIVERED IN NAIROBI ON THIS 18TH DAY OF NOVEMBER, 2021

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L. KOMINGOI

JUDGE

In the presence of:-

Ms Kipkosgey for Mr. Kiarie for the Plaintiff

Mr. Mwangi J. I. for the 1st and 2nd Defendants

Mr. Mokuu for the 3rd Defendant

Steve - Court Assistant