



Onje v County Government of Migori (Environment and Land Appeal E003 of 2024) [2025] KEELC 4745 (KLR) (26 June 2025) (Judgment)

Neutral citation: [2025] KEELC 4745 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MIGORI
ENVIRONMENT AND LAND APPEAL E003 OF 2024
FO NYAGAKA, J
JUNE 26, 2025**

BETWEEN

ZACHARY OKEYO ONJE APPELLANT

AND

THE COUNTY GOVERNMENT OF MIGORI RESPONDENT

(Being an appeal from the Judgment of Hon. C.N.C. Oruo – Principal magistrate in Rongo ELC 18 of 2020 delivered on 23rd February 2024)

JUDGMENT

1. By way of Complaint dated 03/07/2020, the Appellant instituted a suit against the Respondent seeking the following orders;
 - a. A declaration that the Plaintiff is the legal allottee of Plot No. 36A Central Kamagambo situated within Rongo Township.
 - b. Permanent injunction restraining the defendant from any form of interference from the plaintiff's plot no. 36A situated within Rongo Township.
 - c. Costs of this suit and interest at court rates.
 - d. Any other relief that the Honourable court deems fit to grant.
2. The defendant entered a defence dated 19/11/2024. It denied all the contents of the Complaint and prayed that the suit be dismissed.
3. The matter proceeded to full hearing.
4. The Plaintiff testified as PW1. He adopted his witness statement dated 03/07/2020 as evidence in chief and adopted his documents filed as P-Exh 1-6 which consisted of a 'confirmation letter' dated



- 19th March 2015, a receipt from the healthcare services fund, and receipts from the Migori County Government. He stated that he is the registered allottee of Plot 36A situated in Central Kamagambo within Rongo Township which was allotted to him on 19/03/2015. That the plot was initially allotted to his father, Francis Onje (Deceased) who passed on in 1987 and he applied to be allotted the same and the plot was registered in his name. He stated that he had been paying rent and that the survey was conducted on 9th March 2015. After his father's death the property devolved to his mother and the relevant approvals were obtained from the department of public Health Rongo town council. The Defendant then demanded he demolish structures on 09/06/2020 and he stop development without any color of right. He then sought relief from the court.
5. After several adjournments, the defence closed its case and the parties filed submissions. Upon considering the submissions, the testimonies and the evidence, the trial court struck the suit out with costs to the defendant.
 6. Aggrieved with the judgement of the trial court, the Appellant instituted the present appeal vide a Memorandum of Appeal dated 27/02/2024 premised on the following grounds;
 1. The learned trial Magistrate erred by ignoring the entire evidence presented by the Appellant herein.
 2. The learned trial Magistrate erred by ignoring the undefended/uncontroverted evidence of the Appellant thereby dismissing the Appellants suit.
 3. The learned Magistrate erred by finding that the Appellant lacked locus standi to institute the suit yet he presented his allotment letter and approval plans issued to him by the Respondent as his Exhibits.
 4. The learned Magistrate erred by addressing issues not raised in defence concerning matters acquisition of the plot 36A situate at Central Kamagambo.
 5. The learned Magistrate erred in law and fact by ignoring the fact the Appellant never allotted himself the plot.
 6. The learned Magistrate erred in law and fact by holding that failure by the Appellant to carry out succession proceedings of his deceased father, the late FRANCIS ONJE disqualified him from legally holding the plot yet the Appellant applied for and was allotted the subject plot by the Respondents themselves.
 7. The learned Magistrate erred in law by holding that the Appellant lacked locus standi or capacity to sue the Respondent yet a ruling of such a P.O on locus standi by his brother Hon. Langat (PM) on the same held that the Appellant presented the suit as an allottee having been allotted the same plot hence had capacity to institute the suit on his motion.
 8. The learned Magistrate's Judgment is an absolute bias and departure from law.
 7. The appeal was canvassed by way of written submissions.

Appellants' submissions

8. Learned counsel for the Appellant submitted that, on the issue of locus standi, the Appellant filed the suit in his own capacity as the allotted owner of the subject plot number 36A situated in Rongo Township. He did not file the suit in his capacity as a legal representative of the estate of his deceased father Francis Onje, who was initial owner of the subject plot. He urged that after the death of his father, the Appellant applied for allotment since a town plot was not family property and only a



suitable applicant who can pay rents and rates and develop the plots can be allocated the same after making a relevant application. He was found suitable to develop the plot and pay rates for the same and was issued with all relevant approvals for the same. Even if he succeeded his deceased father, it would not have been automatic for him to inherit a plot owned by the County Council by then if he had not proved his capacity to pay rates and develop the plot as per the standards of the local authority the plot not being an absolute plot for inheritance. He maintained that the Appellant having been granted allotment letter after making requisite Application had the locus standi to institute the suit.

9. Counsel submitted that the Appellant attached all the application forms, approvals and allotment letter in trial court and record of Appeal and further that the Respondent knew the proper channel of revoking an allotment and not just through a letter ordering the Appellant to stop any further development on the plot and ordering him to demolish the plot already developed.

Respondents' submissions

10. Counsel for the respondent submitted that the issue of locus standi fundamentally touches on the Law of Succession. Further, that the plot in question was registered in the name of Francis Onje (deceased) and two others who are also deceased. He stated that it is clear that there was no succession done and additionally, that despite paying of the rates by the applicant, the same did not warrant him ownership. Counsel urged that there was no demonstration of how the appellant acquired the property.
11. The respondent referred the court to the statement made by the Chief Officer Lands, dated 9th November 2020 and the statement of Christopher O Rusana which reiterated that there was no succession was conducted. Additionally, the statements confirmed that the procedure of transfer upon the death of the three allottees was not properly effected.
12. Counsel cited the case of Law Society of Kenya vs Commissioner of Lands & Others, Nakuru High Court Civil Case No. 464 of 2000, Alfred Njau and Others v- City Council of Nairobi (1982) K.AR 229 on locus standi and urged that the Appellant failed to demonstrate to the Court in what capacity he brings this suit and his interest in Plot No. 36A, Central Kamagambo situated within Rongo Township. He urged the court to dismiss the appeal with costs to the Respondent.

Determination

13. This is a first appeal. The principle upon which a first appellate court exercises jurisdiction is well settled. The task of a first appellate court was summarized in *Abok James Odera t/a A. J Odera & Associates v John Patrick Machira t/a Machira & Co Advocates* [2013] eKLR as follows:

“This being a first appeal, we are reminded of our primary role as a first appellate court, namely, to re-evaluate, re-assess and re-analyse the extracts on the record and then determine whether the conclusions reached by the learned trial judge are to stand or not and give reasons either way.”

14. Additionally, the Court the of Appeal, in the case of *Susan Munyi v Keshar Shiani* (2013) eKLR stated as follows:

“As a first appellate court our duty of course is to approach the whole of the evidence on record from a fresh perspective and with an open mind. We are to analyze, evaluate, assess, weigh, interrogate and scrutinize all of the evidence and arrive at our own independent conclusions”



15. The issues that arises for determination are; Whether the trial court erred in striking out the suit. Attendant to it is the issue of costs.
16. The trial court struck the plaintiffs’ suit on the basis that he had no capacity to institute the suit. Locus standi is defined in Black’s Law Dictionary, 9th Edition (page 1026) as

“the right to bring an action or to be heard in a given forum”. In the case of Alfred Njau and Others Vs City Council of Nairobi (1982) KAR 229, the Court held that;-

“The term Locus Standi means a right to appear in Court and conversely to say that a person has no Locus Standi means that he has no right to appear or be heard in such and such proceedings”
17. As the appellant claimed that he was the registered allottee of the suit land. It is trite law that he who alleges must prove and therefore, the burden of proof to prove ownership was on the Appellant. Section 107 of the [Evidence Act](#) provides:

“Whoever desires any court to give judgment as to any legal right or liability dependant on the existence of facts which he asserts must prove that those facts exist.”
18. Sections 109 and 112 of the same Act provide:
 109. The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of the fact shall lie on any particular person.
 - ...
 112. in civil proceedings, when any fact is especially within the knowledge of any party to those proceedings, the burden of proving or disproving the fact is upon him.
19. The Appellant claimed that the property had initially been allotted to his father who passed on in 1987 and later, he applied for allotment of the Plot No. 36A Central Kamagambo. He did not provide evidence of the initial registration of the suit land in his fathers’ name, or of the succession proceedings, if any, or any proof that the property was registered in his name by way of allotment, or that he even applied for allotment. The Appellant produced a ‘confirmation letter’ of plot ownership and a bundle of receipts from the county government but there was no certificate of title produced or any allotment letter to show that he had been allotted said plot.
20. In the unlikely event that he had been awarded an allotment letter, the same would still not confer ownership onto the Appellant. In *Ravji Karsan Sangani v. Peter Gakunu* (2019) eKLR, the court held;

“It is registration of title that confers rights of ownership to a proprietor of land. A letter of allotment does not confer rights of ownership but is merely a conditional offer of the land to the allottee subject to the allottee satisfying the terms and conditions of the allotment. The allotment can be revoked and/or cancelled before the title to the land is processed and issued in the name of the allottee. It is only after one has adhered to the requirements set out in the Letter of Allotment and is subsequently registered and issued with title that one acquires an absolute and indefeasible proprietary interest in the land.”
21. According to Section 26(1) of the [Land Registration Act](#);



- (1) 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.
22. The Appellant alleged that he had been diligently paying rates however, the mere payment of rates cannot be considered to confer ownership. In the case of *Torino Enterprises Limited v Attorney General* (Petition 5 (E006) of 2022) [2023] KESC 79 (KLR) (22 September 2023) (Judgment), the Supreme Court held,
- “ 58. So, can an allotment letter pass good title? It is settled law that an allotment letter is incapable of conferring interest in land, being nothing more than an offer, awaiting the fulfilment of conditions stipulated therein. In *Dr Joseph NK Arap Ng’ok v Justice Moiyo Ole Keiyua & 4 others* [CA 60/1997](#) [unreported]; and in *Gladys Wanjiru Ngacha v Teresa Chepsaat & 4 others* HC Civil Case No 182 of 1992; [2008] eKLR, the superior courts restated this principle as follows:
- “It has been held severally that a letter of allotment per se is nothing but an invitation to treat. It does not constitute a contract between the offerer and the offeree and does not confer an interest in land at all ” [Emphasis added].
60. Suffice it to say that an Allottee, in whose name the allotment letter is issued, must perfect the same by fulfilling the conditions therein. These conditions include but are not limited to, the payment of a stand premium and ground rent within prescribed timelines. But even after the perfection of an allotment letter through the fulfilment of the conditions stipulated therein, an allottee cannot pass valid title to a third party unless and until he acquires title to the land through registration under the applicable law. It is the act of registration that confers a transferable title to the registered proprietor, and not the possession of an allotment letter. In *Peter Wariire Kanyiri v Chrispus Washumbe & 2 others*, Environment and Land Court Case No 603 of 2017; [2022] eKLR, Kemei, J held as follows:“
- [15]. In the case at hand, in the absence of any title registered in the name of the plaintiff, the court is unable to hold that the plaintiff is the registered proprietor of the land. This is because the letter of allotment lapsed within 30 days and the same is of no legal consequences” [Emphasis added].”
23. The Appellant having not produced any certificate of title, had no capacity to institute the suit in the trial court. But it is not that alone that would have made the appeal fail. The fact and the law is, as stated in the above cited authorities, that even if the appellant would have proven that his father had been allocated the Plot No. 36A in Rongo, if he died before perfecting the title in his name, the death



would not of itself confer a good title to pass to the Estate of the deceased and subsequently to his beneficiaries. Therefore, even if the appellant applied for changeover of the names in the allotment book to his and continued to pay rates and other fees in that behalf, that would not pass good title to him. It is time people got this legal point loud and clear that a mere allotment letter does not confer title to anyone. It cannot therefore pass good title to any transferee or buyer.

24. Thus, this Court agrees with the trial court that the Appellant failed to demonstrate in what capacity he brought the suit or what his interest in the suit land was.
25. I therefore find no reason to interfere with the finding of the trial court, except to alter the final disposition to be that the suit in the trial Court is dismissed, and the appeal is hereby dismissed for lack of merit.
26. Costs to the Respondent.
27. Orders accordingly

**JUDGMENT DATED, SIGNED AND DELIVERED AT MIGORI VIA THE TEAMS PLATFORM
26TH DAY OF JUNE 2025.**

HON DR. IUR F. NYAGAKA

JUDGE

In the presence of₂

Mr. Owaka Advocate for the Appellant.

Mr. Agure Advocate for the Respondent

