



REPUBLIC OF KENYA



**Daudi v Mitei & another (Environment & Land Case 24 of 2024)  
[2025] KEELC 4586 (KLR) (Environment and Land) (19 June 2025) (Judgment)**

Neutral citation: [2025] KEELC 4586 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIVASHA  
ENVIRONMENT AND LAND  
ENVIRONMENT & LAND CASE 24 OF 2024**

**MC OUNDO, J**

**JUNE 19, 2025**

**BETWEEN**

**JANNITA NDILA DAUDI ..... PLAINTIFF**

**AND**

**SIMON MITEI ..... 1<sup>ST</sup> DEFENDANT**

**KITENGELA ENGINEERING DEVELOPMENT LTD ..... 2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

1. Vide a Complaint dated 24<sup>th</sup> June, 2016 and Amended on 17<sup>th</sup> July, 2018, the Plaintiff herein sought for the following orders:
  - i. A declaration that the Plaintiff is the owner of all that parcel of land known as Title Number Naivasha/Municipality Block 5/517 measuring approximately 0.078 Hectares also known as UNS. Residential Plot No. B2-Moi South Lake Road Naivasha.
  - ii. A declaration that the issuance of letter of allotment to the 1<sup>st</sup> Defendant and Certificate of Lease to the 2<sup>nd</sup> Defendant and registration thereof are null and void.
  - iii. Nullification of the registration of ownership over all that parcel of land known as Title Number Naivasha/Municipality Block 5/517 measuring approximately 0.078 Hectares also known as UNS. Residential Plot No. B2-Moi South Lake Road Naivasha in favour of the 2<sup>nd</sup> Defendant, rectification of the register and registration of the Plaintiff as the owner thereof.
  - iv. Vacant possession or Orders of eviction of the Defendants jointly and or severally either by themselves, servants or agents from all that parcel of land known as Title Number Naivasha/Municipality Block 5/517 measuring approximately 0.078 Hectares also known as UNS. Residential Plot No. B2-Moi South Lake Road Naivasha.



- v. Permanent Orders of injunction restraining the Defendants jointly or severally either by themselves, servants or agents from in whatever manner dealing in the suit land to the detriment of the Plaintiff.
  - vi. Costs of the suit.
  - vii. Interest on (vi) above at court rates.
  - viii. In the alternative, compensation to the Plaintiff by the Defendants jointly and/or severally of a sum of money equivalent to the current market value of all that parcel of land known as Title Number Naivasha/Municipality Block 5/517 measuring approximately 0.078 Hectares also known as UNS. Residential Plot No. B2-Moi South Lake Road Naivasha
  - ix. Any other or further relief the Honourable Court deems fit to grant in the circumstances.
2. Pursuant to service of the Plaintiff's Complaint, the Defendants filed their Statement of Defence dated 20<sup>th</sup> December, 2016 denying the contents of the Complaint and putting the Plaintiff to strict proof. Their argument had been that on 8<sup>th</sup> March 2012, the 1<sup>st</sup> Defendant had sold and transferred the suit land to the 2<sup>nd</sup> Defendant wherein a Certificate of Lease had been issued to the said 2<sup>nd</sup> Defendant. That indeed, the agreement between the Plaintiff and one James Njoroge Kairu had not conferred any right to the Plaintiff since the said James had no rights over the suit land to pass to the Plaintiff.
  3. That not only had the Town Clerk informed the Plaintiff that the suit land was not owned by the Naivasha Municipal Council but by the Government of Kenya through Commissioner of Lands hence the allotment letter from Naivasha Municipal Council had been invalid, the Commissioner of Lands, vide a letter dated 11<sup>th</sup> October 2012 had also confirmed that the 1<sup>st</sup> Defendant was the true owner of the suit land.
  4. That at the time James Njoroge Kairu sold the suit land to the Plaintiff, he had been aware that the same did not belong to his father hence he had entered into an agreement with the Plaintiff to defraud her. That in any case, the 2<sup>nd</sup> Defendant had always been in possession and occupation of the suit land at all times and had been paying land rates for the same. That indeed, the Plaintiff's letter dated 16<sup>th</sup> December 2013 had been annulled by the land Secretary's letter dated 23<sup>rd</sup> March 2016 which had also cancelled the allotment letter of his father Peter Kairu.
  5. That the Plaintiff had been trying to violently dispossess and evict the 2<sup>nd</sup> Defendant by hiring goons to demolish his property which has resulted in damages on the perimeter fence and the gate.
  6. That any fraud pleaded by the Plaintiff or any loss ought to have been directed to James Njoroge Kiai and not the Defendants. That the Plaintiff by her conduct was estopped from claiming to be an innocent purchaser for value since she had neglected and/or failed to exercise due diligence but had proceeded with the sale transaction.
  7. That the Plaintiff was neither the proprietor of the suit land and neither had she ever been in possession and or occupation of the same for which she was not entitled to any of the reliefs sought in the Complaint. That no reasonable cause of action had been disclosed in the instant suit which was misconceived, incompetent and bad in law and ought to be dismissed with costs.
  8. In Reply to the Defendants' Statement of Defence, the Plaintiff reiterated the contents of her Complaint denying the sale between 1<sup>st</sup> Defendant and the 2<sup>nd</sup> Defendant and reiterating that any transfer or registration made therein had been carried out fraudulently. She thus prayed for Judgement as per the Complaint.



9. Upon compliance with the pre-trial directions the matter had proceeded for hearing on the 17<sup>th</sup> November, 2021 wherein Jannita Ndila Daudi, the Plaintiff herein testified as PW 1 while adopting her witness statements as her evidence in chief to the effect that upon moving to Naivasha in the year 2001 and renting an office space opposite one Mr. Kairu's, they had soon become family friends wherein she had asked to lease their land for farming. She had been informed that the land belonged to James Kairu, wherein after she had spoken to him, he had agreed to sell it to her.

That thereafter, James had brought the Council Lease and Letter of Consent to her office. By consent she produced copies of the documents listed in her bundle and Supplementary list and a list dated 12<sup>th</sup> July 2018 as follows:

- i. Sale Agreement dated 30<sup>th</sup> May 2013 as Pf exh 1,
- ii. Allotment letter dated 6<sup>th</sup> June 1994 as Pf exh 2,
- iii. a Statement on payment of rates by the Municipal Council of Naivasha as Pf exh 3,
- iv. the Transfer of ownership of land dated 12<sup>th</sup> May, 2005 as Pf exh 4
- v. A receipt of the rates payment Dated 18<sup>th</sup> May 2006, 17<sup>th</sup> June 2015 and 31<sup>st</sup> August 2010 as Pf exh 5
- vi. Property rate statement dated 17<sup>th</sup> June 2015 as Pf exh 6
- vii. Development plan as Pf exh7
- viii. A letter by the National Land Commission dated 16<sup>th</sup> December 2013 as Pf exh 8
- ix. Certificate of lease as Pf exh 9
- x. Letter of allotment dated 23 April 1999 as Pf exh 10
- xi. Demand noticed dated 17<sup>th</sup> June 2015 as Pf exh 11
- xii. A copy of OB number OB35/21/6/2016 as Pf exh 12
- xiii. Copies of photographs in respect to the status of the suit land as Pf exh 13
- xiv. Map as Pf exh 14
- xv. A cheque Deposit voucher for Ksh. 500,000/= dated 26<sup>th</sup> January 2011 as Pf exh 15
- xvi. Approved PDP No. 99 dated 16<sup>th</sup> October 2002 as Pf exh 16
- xvii. Allotment letter dated 18<sup>th</sup> January 1995 as Pf exh 17
- xviii. Allotment later dated 9<sup>th</sup> March 2011 as Pf exh 18
- xix. Payment receipt for 33,420/= dated 31<sup>st</sup> October 2013 as Pf exh 19
- xx. Rates and rent receipts for 6,490/= dated 29<sup>th</sup> December 1994 as Pf exh 20
- xxi. List of Directors for power plant engineering Company as Pf exh 21

10. She then went on to testify that they had gone to the council's office where she had confirmed that the land had been transferred to him. That when they visited the ground, there had been evidence of occupation wherein there was a toilet and a masonry tank. That the said land however could not be found in Nairobi Lands Record wherein one Mr. Muturwa had then advised them to go back after 2 weeks. That she had paid a sum of Kshs.33,420/= on 31<sup>st</sup> October 2013 to the Lands Development.



That subsequently, she had met her part of bargain in the agreement with Mr. Kairu since she had paid the first deposit on January 2010 and the balance on 30<sup>th</sup> May 2013.

11. Her testimony was that after Mr. Mutwiwa had signed the allotment, she knew that the land belonged to the Kairus. That she had written to Naivasha (sic) to inquire why the land had been allocated to a third party.
12. That after sometime, her husband had found one lady by the name Mercy Nyambura and her husband erecting a fence on the land. She thus sought that she be granted the prayers in the plaint.
13. On cross examination, she confirmed that although she had done due diligence and conducted a search, the land had not been registered and there were no registration documents for which the Lands office had promised to look for the same. She however maintained that in the year 2010, she had known that Mr. Peter Kairu Kiara was the owner of the land and that she had been in contact with his son James Njoroge Kairu. That the said Peter had died in the year 2006 before she had expressed her interest in the land which was in the year 2010.
14. That she had made the first payment on 26<sup>th</sup> January, 2011 in a Sale Agreement that had been between her and James Njoroge Kairu. That whereas she had asked for Letters of Administration, she did not see the Grant and Confirmation of Grant. That however, she had seen the Succession documents whose case number she could not recall.
15. Her response when she was referred to paragraph 3 of the sale agreement was that she had been shown the court case and that the said Agreement had been executed before a Lawyer. She thus testified that it may have been an omission on the part of the said lawyer to include succession cause number. She confirmed that she had entered into the agreement on her own behalf. She explained that whereas the agreement had indicated that she traded as Power Plant Engineering Services, she was its sole proprietor, although she did not have any evidence of its registration as a business.
16. When she was referred to the CR12, which was not produced in evidence, but had been referred to as the Plaintiff's document (No 17) she confirmed that she and Joel Kongoo Njioka were Directors and that the date of registration of the company therein had been 17<sup>th</sup> July 2008. She however clarified that the said company which was a sole proprietor did a different business with power plant Engineering because the cheque had been issued by Power Plant Engineers Limited.
17. She was referred to her document No. 15, which she confirmed to be a cheque drawn by Power Plant Engineering Services Ltd to James Njoroge Kairu. That the deposit had been paid on 26<sup>th</sup> January 2011 before the execution of the agreement. She confirmed that the purchase price of the land had been Kshs. 1,500,000/= but that she had no other evidence stating that she had paid most of the said purchase price by cash. She admitted not having seen a title document from the vendor.
18. When she was referred to clause 3 of the Sale Agreement, she confirmed that she was to pay rates. She maintained that she knew that James had the capacity to sell the land and confirmed that clause 5 of the Agreement indemnified her while clause 7 of the Agreement provided for penalty in default to transfer.
19. She was referred to paragraph 4 of her witness statement, she confirmed the documents therein were prior to sale and that she had paid and had taken up the responsibility to pay rates. Her evidence was that her statement to the effect that the sale agreement had started in the year 2011 must have been an error caused by the lawyer.
20. When she was referred to Pf exh 2, which was the Letter of Allotment dated 6<sup>th</sup> June 1994, she confirmed that Peter Kairu Kiara was the original allottee and that it had been James who had availed the said letter to her. That she had complied with the conditions therein at paragraph 2 of the said letter



and that she had the receipts for the payments that had been required. She however acknowledged that a receipt dated 29<sup>th</sup> December 1994, had been made late in time.

21. When she was referred to her documents No. 17 and 18, she confirmed that the area of the land was 0.36 Ha – Un-surveyed for a term of 99 years. That whereas in Document No. 17, the term begun on 1<sup>st</sup> January, 1995, in document No. 18 there had been a renewal of the same. She also confirmed that whereas a renewal was applied for on account of loss of documents, she did not ask for documents evidencing loss of first letters. She also confirmed that the owner did not pay Kshs. 33,170/= that had been sought for in document No. 7. However, in reference to document No. 18, she confirmed that Kshs. 33,420/= had been paid in the year 2013. Lastly, she confirmed that she did not have any document to show that the Government had extended the period for payment although the said Government had accepted the payment.
22. In reference to the Transfer produced as Pf exh 4, she confirmed that whereas she had produced the same in evidence, it bore no reference number or date and neither had the Transfer and the clearance fee been paid. She explained that there had been cancellation of the word “Vendor” wherein the word “Donor” had been written. She however confirmed that she was not present during the execution of the transfer hence she did not know if they had brought their original identity cards.
23. She also confirmed that there had been no witnesses and that the date of approval indicated on the transfer. That further, the Minute number and committee that had sat were missing from the form. She testified that she was not aware that the statutory payments were normally paid for gifts. That whereas the site rent per year was Kshs. 1,440/= she never asked whether the same had been paid.
24. When she was referred to her documents No. 16 (a) and (b), she confirmed that the same were the PDPs. That whereas the Vendor had received two letters of allotment dated 18<sup>th</sup> January 1995 and 9<sup>th</sup> March 2011, the PDP was dated 15<sup>th</sup> March 1999 and that she was not well versed with the PDP process at Lands office.
25. She confirmed that the acreage on the allotment letter was 0.36Ha. That it had been Mercy who had brought a PDP map and that she had her PDP map at the CID office as well as her document No. 16(a) documents which she had first taken to the CID office.
26. That she had just become aware of the letter from the Chief Land Registrar dated 11<sup>th</sup> October 2012. She confirmed that a letter of 23<sup>rd</sup> March 2016 that had been addressed to Peter Kairu had canceled his allotment and that she was not aware if the estate of Peter had filed any suit against the Commissioner of Lands.
27. She confirmed that during the investigations, the Chief Land Registrar had confirmed that the 1<sup>st</sup> Defendant had been the allottee and that the land has been transferred to the 2<sup>nd</sup> Defendant. She maintained that there had been a building on the land and that a burial had been conducted on an adjacent plot.
28. She stated that the trees that had been on the land could have been planted in the year 2002 and that they had been cut by the Ministry of Water while putting up a water pipe. She also confirmed that 1<sup>st</sup> Defendant had people on the ground and that the container had been put on the site after the court’s order had been issued. That however, she had still been on the ground by the time they had gone to the CID.
29. When re-examined, she confirmed that the allotment letter in Kairu’s name had come from the County Government and that she had paid rates to Naivasha County Council. She clarified that there had been



- two entities, one being a Limited Liability while the other was a sole proprietorship. She denied that Kairu's letter of allotment had been revoked.
30. She also confirmed that the Defendants had built kiosks on the land and that she could not continue farming on the land because the Defendants' agents had been stealing anything she grows. She denied having prior knowledge of the letter dated 11<sup>th</sup> October 2012 which was brought to her attention when she appeared in court to testify.
  31. She confirmed that she had paid for the land as per the contract and that the DCI had given no final verdict on the matter, that her PDP was in relation to Pf exh 16(a) for which she had applied for a certificate of lease. That they had also written to the Land Registrar to the effect that the Defendants' documents had been a suspect hence a caution should be put over the land.
  32. James Munge Rimui, testified as PW2 and adopted his witness statements as his evidence-in-chief to the effect that he had lived in Naivasha since the year 1980 wherein he had become a Councilor in the year 1987. That he knew Peter Kairu in the year 1983 as a resident of the area wherein they used to visit the land wherein they had planted grevillea and a Jerusalem fence. That Peter who was now deceased had cows and goats and had also built a slaughter house on the land.
  33. On cross-examination, he confirmed that the owner of the land herein was Peter Kairu Wa Kiai although he had not seen any documents of ownership. His evidence was that whereas the person claiming to own land may have title or a document or sale agreement, Mr. Peter Kairu had never shown him any of the said documents. He confirmed that Mr. Peter Kairu had died in July 2006 but he did not know what had happened to the title after he died.
  34. He admitted that he did not have photographs showing the slaughterhouse or the planted trees. He also confirmed that Peter Kairu had been buried on an adjacent plot being No. Block 5/1830. That whereas the said Peter had several plots, it was not true that the suit land was not his. He denied the existence of any lease to another person as he had not seen the same, and was adamant that the entire land belonged to Peter.
  35. In re-examination, he confirmed that Peter had many plots all over. That whereas the slaughterhouse had been demolished, the fence and the structures that had been built therein were still there.
  36. PW3, one Robert Simiyu introduced himself as an Assistant Director Land Administration at the Ministry of Lands Headquarters and that he was in pursuant to summons issued to him in respect of Naivasha Municipality Block 5/517(the land). That the land appeared to have 2 files which files he had carried with him to court. That the first file was in favour of Peter Kairu who had been allocated the land in the year 1995 and another one in favour of Simon Mitei, the 1<sup>st</sup> Defendant herein, who had been allocated the land in the year 1999.
  37. That in the Peter Kairu file, there was a letter from Naivasha Municipal Council dated 6<sup>th</sup> June 1994 which had formed the basis for his allocation in the year 1995. That there was also a second letter of allotment of 9<sup>th</sup> March 2011 in favour of Peter Kairu Kiai which was a renewal of the letter of 1995. That there was also an acceptance for payment showing that Peter had accepted the offer in the year 2012 wherein he had been issued with a receipt Number 3369404 dated 30<sup>th</sup> October 2013. That further, there was a letter from their office to the District Land Registrar dated 16<sup>th</sup> February 2013 notifying him of receipt of a complaint over the land.
  38. That in respect to the 1<sup>st</sup> Defendant's file, there was a PDP dated 28<sup>th</sup> October 2002 and a letter of allotment dated 23<sup>rd</sup> April 1999. That the 1<sup>st</sup> Defendant had accepted the offer on 23<sup>rd</sup> August, 2002 and was issued with the receipt No. F:256232 dated 29<sup>th</sup> November 2002. That there was also a letter



dated 17<sup>th</sup> May 2004 from the Commissioner of Lands to the Director of Surveys requesting for a RIM which RIM had been received from the Director of Survey on 10<sup>th</sup> November 2004.

39. He explained that the process of allotment of land began with minutes of the plot allocation committee or letter from the defunct local authority (Municipal or County Council). That thereafter, the Director of Physical Planning was required to prepare a PDP which was used in allocation. That afterwards, a valuation was done by the Commissioner for stand premium after which he was issued a letter of allotment by the Director of Physical Planning. That according to him, Peter Kairu's file was the one that had followed the due procedure since there had been a letter from Naivasha Municipal Council and the PDP that had been used was of the year 1992 whereas his allocation had been in the year 1995.
40. His evidence was that in the 1<sup>st</sup> Defendant's file, the letter of allotment had been issued in the year 1999 while the PDP had been issued in the year 2002 hence it appeared that the land had been allocated before planning which should not be the case. That indeed, the same could have been as a result of backdating of a letter of allotment which was illegal. That further, there had been no authority to allocate the land in the 1<sup>st</sup> Defendant's file hence the same had not been a procedural allocation. That according to the Ministry, Peter Kairu who came earlier was the proper allottee.
41. When he was cross-examined, he confirmed that the documents he had been asked to produce in evidence were from their office and although there was no specification by the court, the plot in issue had been mentioned was plot No. Block 5/517.
42. He maintained that Kairu's documents were regular, that there had been a copy of a letter of allotment dated 6<sup>th</sup> June 1994 from the defunct local authority for which the Original could have been in the General file or the file for the respective allottee. He also confirmed that whereas the Municipal Council's letter had given 60 days to comply by way of payment, he did not have evidence of payment. However, he confirmed that before the letter was written to them there must be verification of payment and where there was non-compliance, they notified the allottee or renewed the allotment letter. That nonetheless, he was not familiar with the procedures at the County Council where there was non-compliance since he had no other document from the County Council.
43. When he was referred to Pf exh 4, he testified that he did not know the Peter and James mentioned therein and that the clearance certificate had not been paid for. That further, it contained no date or a witness.
44. He confirmed that the County council had sittings for approval of transfers however in this instance, there had been no approval date of transfer, no minute number or committee. That either the Municipal council or the District Commissioner could issue allotment letters which were formalized by the Commissioner. That in the instant case, it had been the Municipal that had issued the said letter.
45. He explained that for an allotment letter to issue to the allotted, all procedures needed to have been followed. That he had no evidence on whether Peter Kairu had complied with the said procedures and neither did he know whether the said Peter Kairu was alive. I don't know what I'm going to do I'm going to go home He confirmed that Peter's Allotment Letter was dated 9<sup>th</sup> March 2011 and that he had the same in its original form.
46. When he was referred to Clause 2 of the letter of allotment of 18<sup>th</sup> January 1995, he confirmed that the time of compliance that had been stated therein was 30 days. That nevertheless, he was not certain if there was compliance with that clause. He explained that there had been another letter issued on 9<sup>th</sup> March 2011 and that both letters had been issued by the Commissioner of Lands and that he had no evidence that payments had been done within the 30 days stipulated.



47. He explained that in the year 2010, Hon. Ngilu had ordered all expired letters of allotment be renewed and that there had been a circular to that effect although he did not have the same in court. That whereas the document had not been clear since he had not come with the original, the same was in relation to plot B2 measuring 0.78Ha.
48. When he was referred to Plaintiff documents 15 and 16, he confirmed that measurement shown therein was 0.6Ha which differed with the measurement in the PDP. That he had the 1<sup>st</sup> Defendant's original allotment letter issued in the year 1999 and that it had been signed on the Commissioner's behalf indicating the size of the land as 0.78Ha which had conformed to the size that had been indicated in the PDP. He reiterated that it was after the PDP that a letter of allotment was issued. That the 1<sup>st</sup> Defendant's letter had come before the PDP of the year 1992.
49. When he was referred to the Defendant's bundle of documents filed on 20<sup>th</sup> June 2017, he confirmed that the PDP had been signed on 10<sup>th</sup> October 2002 and approved on 28<sup>th</sup> October 2002 and that the said records were in his file, although the original was contained in the general file of the Naivasha Municipality.
50. He further explained that an allotment followed the PDP, then payment, survey and issuance of a lease wherein a lease could not be issued without following these procedures. His evidence was that although the 1<sup>st</sup> Defendant had been issued with a lease, he however had no record of any Lease or Certificate of Lease issued to Peter Kairu.
51. His response on being referred to a letter dated the 23<sup>rd</sup> March, 2016 in Defendant's bundle of document, had been that the same had recalled the letter of allotment to Peter Kairu as it had been cancelled. That the letter had also been copied to the DCI.
52. When he was referred to a letter dated 28<sup>th</sup> January, 2016 addressed to the Chief Land Registrar at page 33 of the Defendant's bundle, he confirmed that he did not have a copy of the same and neither did he have the Chief Land Registrar's letter of 5<sup>th</sup> April 2016 as he only had the one of 23<sup>rd</sup> March 2016.
53. That whereas Peter was supposed to surrender the original letter of allotment, he never did and neither had he gone to collect the money that he had paid. He confirmed that the letter of allotment of 18<sup>th</sup> January 1995 had been issued after the PDP. That he had done due diligence and there had been a letter from Director of Physical Planning showing what had happened. That whereas he did not have any correspondence, he still held that Peter Kairu was the proper allottee.
54. In re-examination, he confirmed that a letter dated 9<sup>th</sup> March 2011 was a renewal letter and that whereas Paragraph 2 of the said letter had given 30 days, the Lease period started on 1<sup>st</sup> January 1995. That the purported cancellation had come in the year 2016 whereas payments had been made in the year 2012. That Peter was already an allottee as at 2011. He confirmed that there had been a parallel file and that the payment had to be made to the Council before they could recommend allocation.
55. That in case of non-compliance they would write a letter giving an allottee a further 30 days to comply, then 14 days after which the allotment stood cancelled with a notification to the allottee. That the letter dated the 23<sup>rd</sup> March 2016 had not been such letter.
56. He explained that a letter could not come before PDP hence the officer ought to have known with due diligence that the land had been committed in the year 1995 for which Peter was still the legal allottee. He explained that the PDP acreage was an approximation wherein the acreages in the PDP and letter of allotment could differ. He confirmed that the originals of letter were usually placed in the General file.

The Plaintiff thus closed her case.



57. The Defence case proceeded for hearing with a testimony from Simon Cheboi Mitei, the 1<sup>st</sup> Defendant herein who adopted his Witness Statement as his evidence in chief and proceeded to testify that he had been allocated plot No. Block 12/517 via an allotment letter dated 23<sup>rd</sup> April 1999 herein produced as Df exh 1(a). That he was given a PDP dated 15<sup>th</sup> March 1999 herein produced as Df exh 1(b) after which he had paid a sum of Kshs. 111,623/= as per a receipt marked as DMFI-2. He explained that it had been after he had paid the sum of money that he had been issued with the Allotment Letter and subsequently, a letter dated the 19<sup>th</sup> March 2012 as well as the lease which produced as Df exh 3 and 4 respectively.
58. He testified that on 5<sup>th</sup> April 2012 he had been given a Certificate of lease whose copy he produced as Df exh 5. That whereas the Allotment letter had indicated that the land was 0.78 Ha, the PDP had indicated the acreage of the said land as 0.766 Ha while the Lease had indicated that the same measured 0.7798 while the Certificate of Lease had stated the acreage as 0.7798 Ha.
59. He testified that he had initially sold the land to a man named Nazeel who had paid him a sum of Kshs. 500,000/= but had failed to complete the purchase price wherein they had sought for another buyer, one Kariuki who, together with his wife had entered into a sale agreement on 8<sup>th</sup> March 2012, herein produced as Df exh 6, where they had purchased the suit parcel of land at a consideration of Kshs. 2,500,000/= which money had been paid in full both by a banker's cheque and by cash.
60. That the 2<sup>nd</sup> Defendant refunded Nazeel his money, amounting to Kshs. 500,000/= as was stipulated at paragraph 3 (iii) of the agreement. That he had then transferred the land to the purchasers vide a Transfer dated 16<sup>th</sup> April 2012 herein produced as Df exh 7 and therefore had no claim from the 2<sup>nd</sup> Defendant.
61. That subsequently the 2<sup>nd</sup> Defendant had been issued with a Certificate of Lease herein marked as DMFI-8. He confirmed that Minju Kariuki and his wife Beatrice had signed the Transfer and that he did not know how Mercy, was connected to Kitengela Engineering (the 2<sup>nd</sup> Defendant herein).
62. That when he was summoned to go to the County Offices Naivasha by Town Clerk, he had been accompanied by the police, Mercy and a Director of the 2<sup>nd</sup> Defendant wherein he had written a letter dated 11<sup>th</sup> June 2012 to the Commissioner of Lands seeking a confirmation that he was the land owner. He produced the letter as Df exh 9. That vide a letter dated 11<sup>th</sup> October 2012, this position was confirmed and the letter copied to both the Town Clerk and the District Land Registrar. He produced the letter dated 11<sup>th</sup> October 2012 as Df exh 12.
63. That they had also been summoned to the DCI Naivasha in the year 2012 wherein he had recorded a statement and thereafter an inquiry file had been wherein the DCI had written a Letter dated 28<sup>th</sup> January 2016 herein marked as DMFI-14 to the Commissioner of Lands which received a response letter dated the 5<sup>th</sup> April 2016 herein marked as DMFI-15.
64. He testified that he had the physical occupation of the plot wherein he had fenced the same, planted grevillea and Kei-apple trees and farmed thereon. That he had sold the land in the year 2012 and that nobody had claimed the same during that time. That there had been nobody in the land and that he had not built any structure herein. He explained that the Physical Planning officers must visit the land before making a PDP and if the officers found any structure, they refused to proceed. His evidence was that he had followed the due process, and that the letter of allotment and PDP matched.
65. When he was referred to file No. 288153, he testified that he did not know Peter Kairu Kiai thus he could not recognise his allotments since the Government only issues one allotment letter. On being



- referred to a letter of 18<sup>th</sup> January 1995, he confirmed that the same had indicated the acreage of the land as 0.3 Ha while its PDP had read 0.7 Ha which had been different from the allotment Letter.
66. His response on being referred to a letter of 9<sup>th</sup> March 2011 was that whereas the said letter had indicated the acreage as 0.036Ha, the PDP attached therein had indicated that the acreage was 0.766 Ha. That on the other hand, his allotment letter had read 0.78 Ha. He thus testified that the Plaintiff's documents did not look genuine. That in any case, he had never been charged with fraud.
  67. His evidence was that the documents that he had produced had matched with those in the file No. 232333 from the Lands Office. That indeed, a letter had been written advising that the claimant be refunded his money and letter of allotment be cancelled and that file No. 288153 had a copy of that letter. That he did not issue the Plaintiff with an allotment letter. That since he had never sold the Plaintiff the land, it was not possible to have him refund her and the case should be dismissed with costs since he was the proper allottee.
  68. There was no cross-examination of DW1 as Counsel for the Plaintiff was absent when the matter came up for further Defence hearing on the 4<sup>th</sup> March 2025. The Defendants closed the 1<sup>st</sup> Defendant's case.
  69. The 2<sup>nd</sup> Defendant's case proceeded with the testimony of DW2, Mercy Nyambura Kenyara, an Advocate who first adopted her witness statement dated 30<sup>th</sup> March 2017 as her evidence in chief and her lists of documents dated 20<sup>th</sup> December 2016 and 19<sup>th</sup> June 2017 before proceeding to testify that she was one of the Directors of the 2<sup>nd</sup> Defendant herein having bought it from its former Directors Minyu Kariuki and Beatrice Wangu Minyu who had been her longtime clients.
  70. That she had filed the transfer of shares, change of ownership, special resolution Directors' affidavits, notification of change of Directors which documents were part of the bundles filed in court. That after a special resolution dated 19<sup>th</sup> March 2012 herein produced as Df exh 10 and a Director's affidavit sworn on 18<sup>th</sup> March 2012 herein produced as Df exh 11, she had prepared the notification of change of Directors dated 19<sup>th</sup> March 2012 herein produced as Df exh 13 (a), wherein a change was effected as per the CR 12 dated 27<sup>th</sup> July 2016 herein produced as Df exh 13 (b) wherein the new Directors were herself and her son Edwin Mwangi Kanyara.
  71. That the 1<sup>st</sup> Defendant was the original allottee of the parcel of the land No. Naivasha Municipality block 5/517 (the land) from whom the previous Directors had bought the same and sold it to her on the 8<sup>th</sup> March 2012 as per the sale agreement that had been produced as Df exh 6. She clarified that there was no dispute on the sale of the land between the 2<sup>nd</sup> Defendant and 1<sup>st</sup> Defendant.
  72. Her evidence was that after the sale, a Certificate of Lease had been issued to the 2<sup>nd</sup> Defendant on 31<sup>st</sup> May 2012 as per Df exh 8. That she had done her due diligence at the time she was purchasing the land wherein she had conducted a search dated 17<sup>th</sup> July 2012 and another search dated 26<sup>th</sup> August 2012. She explained that the second search had been for purposes of paying the land rates.
  73. That on 26<sup>th</sup> January 2015 she had done another search after the DCI had required that they do the same when she had reported the matter and that she had the payment receipts accompanying the searches. She produced the said searches and receipts as Df exh 16 (a - c). That after she had conducted the searches, they had gone to the ground, and found that whereas there had been no neighbor, on the right side of the land there were some curio shops. That they had asked for the owner of the land wherein they had not been informed of any issue. That whereas they had visited the ground with 1<sup>st</sup> Defendant, the neighbors did not know that he was the owner, instead they had told them that the owner of the and was a Kalenjin man called Simon Mitei.



74. That at that time the land had been fenced with ki-Apple and gravellier and that there had also been trees on the ground which trees were still there. That the fence on the upper side was also still there. She explained that the fence on the left had recently been removed by the Water Company to fit a pipe to supply water. That in the year 2012, the 1<sup>st</sup> Defendant had maize and beans planted on the land.
75. That the current status on the land was that there was a container house comprised of four rooms occupied by her workers and that farming activities were ongoing therein. That whereas she had put up a stone perimeter wall, the same had been brought down by the Plaintiff. That she had the pictures in her bundles of documents depicting the status on the ground as follows;
- i. The first photograph showing the trees and vegetation and a wall.
  - ii. The third Photograph showing the house container.
  - iii. A photograph showing stones where they had been constructing a reservoir, trees and a perimeter wall.
  - iv. A photograph showing the house container.
  - v. A photograph showing a different angle of the perimeter wall and some trees and that there was also an electricity post inside the shamba.
  - vi. A photograph showing the perimeter wall and trees at a different angle.
  - vii. A photograph showing the water reservoir they had been constructing using stones on photo No. (iv)
76. She explained that the photographs were taken before the court case had been filed. That she had taken immediate occupation after the purchase in the year 2012 wherein she had continued with the farming. She produced the said photographs as Df exh 17 (a - h)
77. Her testimony was that on 24<sup>th</sup> December 2015, as they had been traveling as a family for vacation and while passing by the land, they had noticed some sweet potatoes planted on one side of the land while the other side of the land had maize and beans. That on their way back, they had physically visited the land to find out who had planted the said crops wherein they had been directed to the curio shop to get the information. At the said shop, they had been told that it had been a 'mkamba' called Janita, the Plaintiff herein. They had been given her telephone number.
78. That subsequently, on 28<sup>th</sup> December 2015, they had proceeded to Naivasha Police Station to report a trespass case wherein she had been given OB No. 39/28/12/15 by the CID officer called CPL Chepkwony which OB she produced as Df exh 18. That after she had reported, the Plaintiff had been summoned to the police station but she said that she was not available. They were thus asked to report at the station on 26<sup>th</sup> January 2016 with their respective documents and the Original allottees.
79. That subsequently, she had contacted the 1<sup>st</sup> Defendant who had accompanied her to the said meeting at the police station where the Plaintiff was also present with her allotment letters from the Municipal Council of Naivasha dated 18<sup>th</sup> January 1995 and 9<sup>th</sup> March 2011. That her letter of allotment ref. No. NMC/LND/8/3/1 dated 5<sup>th</sup> June 1994 did not however have the plot number and size.
80. That she had been asked to hand over the documents they had not knowing that they would give a copy to the Plaintiff, wherein they had maneuvered and managed to get the allotment letter dated 18<sup>th</sup> January 1995 wherein the person who was helping them at the lands officer had removed the PDP of her allotment letter and attached it to the letter dated 18<sup>th</sup> January 1995.



81. That the PDP had been for the year 1999 and when they realized that they did not make the payment within 30 days as per the condition in the letter of allotment, to sanctify their mistake, the Plaintiff had been issued with another allotment letter of the year 2011 which also had the PDP of the year 1999 which was produced as Df exh 1 (a-c). That whereas the acreage of the land in the said PDP was 0.766 hectares, the acreage of the land in the Plaintiff's two allotment letters was 0.36 hectares. That Plaintiff's PDP on the other hand read the acreage of the land as 0.78 hectares.
82. She testified that Df exh 4 being a Lease had been registered on 5<sup>th</sup> April 2012 showing the acreage as 0.7798 hectares. When she was referred to Df exh 5, she confirmed that the same had shown the acreage as 0.7798 which if rounded of was 0.78 hectares.
83. That the DCI had then written a letter dated 28<sup>th</sup> January 2016 to the Nairobi lands office to confirm the original allottee, which letter she produced as Df exh 14. That there had been two responses to the said letter, one from the Land Administrative Secretary and another by the Representative of the Chief Land Registrar. That the response from the Land Administrative Secretary dated 23<sup>rd</sup> March 2016 had confirmed that the plot had been allocated to the 1<sup>st</sup> Defendant herein. That the said letter had been addressed to Peter who according to the Plaintiff was the allottee of the land. That the said Secretary had requested Peter Kairu to return the original letter of allotment and payment of the receipt for refund. She produced the said letter as Df exh 19.
84. That the second letter Reference No. CLR/R/95/VOL. VI (145) from the representative of the Chief Registrar dated 5<sup>th</sup> April 2016 had confirmed that the land had been transferred to the 2<sup>nd</sup> Defendant wherein a lease had been issued. She produced the said letter as Df exh 15 and proceeded to testify that after the DCI had cleared them as being the legitimate owner, they had fenced the land and put the house container on the land.
85. That since the use of the plot had initially been for residential purposes, she had applied for change of user on 14<sup>th</sup> March 2013 wherein she had advertised the same in the people's Newspaper herein produced as Df exh 20. That the Naivasha Sub-County had approved the putting up of the perimeter wall as per the letter dated 28<sup>th</sup> June 2016 herein produced as Df exh 21.
86. That after she had advertised the change of user, she had neither received any objection. That she had a certificate of lease as Evidence of ownership. That the prayers that the Plaintiff herein was seeking were not possible since she should have sued the Government (the Land Secretary)
87. That the Plaintiff's claim was that she had bought the land from James the son of Peter who was the allottee as per a sale agreement produced as Pf exh 1, which Sale Agreement dated 30<sup>th</sup> May 2013 had been entered into way after the lease of 31<sup>st</sup> May 2012. That subsequently, had the Plaintiff done due diligence, she would not have entered into the said agreement.
88. That as per Clause 7 of the said agreement, the Plaintiff ought to have also sued James the seller because he had sold the land after the Lease had been issued. That in any case, there had been no succession documents produced by the Plaintiff. She thus prayed that the Plaintiff's suit be dismissed with costs.
89. On cross examination, DW2 confirmed that she became a Director of the 2<sup>nd</sup> Defendant on 19<sup>th</sup> March 2012, and that the purchase of the land had been made on the 8<sup>th</sup> March 2012 before she became a Director. That she had made a complaint to the DCI of a trespasser on the land wherein they had had been asked to provide documents and the initial allottees on 26<sup>th</sup> January 2016.
90. She confirmed that the sale agreement was dated on 8<sup>th</sup> March 2012 and at the time of purchase, there had been no Certificate of Title. That in the absence of a Certification of Lease, the previous Directors



had bought the land from the 1<sup>st</sup> Defendant. She confirmed that the 2<sup>nd</sup> Defendant had purchased the land from the 1<sup>st</sup> Defendant.

91. That they had used the allotment letter to do their due diligence and explained that where there was no Certificate of Lease, a search could be conducted from the correspondence file found in the Lands Office. That indeed, that the 2<sup>nd</sup> Defendant had transferred the land to them on 31<sup>st</sup> May 2012 during which time there had been a Certificate of Title. That whereas she had not been involved in the transferring of the property from the 1<sup>st</sup> Defendant to the 2<sup>nd</sup> Defendant, as a lawyer she would know how the Certificate had been obtained. That she had done due diligence by looking at the root of how the certificate had been obtained.
92. She confirmed that 1<sup>st</sup> Defendant's file number had been No. 232335 while the Plaintiff's file had been No. 288153 and explained that the system at the land's office was that files were opened according to dates. That file No. 288153 had been opened in the year 2013. She confirmed that she had the knowledge as a conveyance advocate for the last 37 years and that one did not have to work at the lands office to know the procedure. That she was aware that PW2 had testified according to how much he had been paid to say.
93. In re-examination, she clarified that she had become an interested party in the matter on 19<sup>th</sup> March 2012 when she became a Director of the 2<sup>nd</sup> Defendant at which time, the 2<sup>nd</sup> Defendant had already purchased the land through its previous Directors. She confirmed that the lease had been issued on 31<sup>st</sup> May 2012 in the name of the 2<sup>nd</sup> Defendant.
94. She confirmed that they had conducted an official search as per the Certificate of lease although when the 1<sup>st</sup> Defendant sold the land to the 2<sup>nd</sup> Defendant on 8<sup>th</sup> March 2012, there had been no Certificate of lease but only an allotment letter.
95. She explained that where there was an allotment letter, one was given a correspondence file to peruse. She confirmed that the said files had been retained by the court suo moto and that the documents that had been produced by the Defence were in the said file.
96. That the 2<sup>nd</sup> Defendant having been a purchaser for value, they had satisfied all the requirements. That indeed, from the files that had been retained by the court, there was a letter whose effect was that the allotment letter by the Plaintiff had been cancelled. That there had been no evidence that the Plaintiff had collected her dues from the Government because she could not do so since she was not Peter Kairu.
97. That in any case, the Plaintiff's name did not appear on any of the two files. She urged the court to check the date when the two files were opened. She confirmed that there had been about 555,580 files that had been opened between the two files.
98. The Second Defendant closed their case and parties were directed to file their written submissions.
99. The Plaintiffs' submissions dated 25<sup>th</sup> March 2025 raised the following issues for determination:
  - i. Whether the Plaintiff is the legitimate owner of the parcel of land known as Naivasha/ Municipality Block 5/517 measuring approximately 0.0798 Hectares also known as UNS. Residential Plot No. b2-Moi South Lake Road Naivasha Township.
  - ii. Whether the certificate of leases issued on the 5<sup>th</sup> April, 2012 and 31<sup>st</sup> May, 2012 in the names of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants respectively should be cancelled.
  - iii. Whether Costs are payable to the Plaintiff by the Defendants.



100. On the first issue for determination the Plaintiff's submission was that she had obtained a valid interest pursuant to the letters of allotment dated 6<sup>th</sup> June, 1994 and Sale Agreement dated 30<sup>th</sup> May, 2013 for suit parcel of land as per her testimony and documentary evidence. That this position was confirmed by the DW2 who in her Witness Statement dated 30<sup>th</sup> March, 2017 had stated that she recalled that James Njoroge Kairu had attended a meeting and presented the allotment dated the 6<sup>th</sup> June, 1994 from Naivasha Municipal Council in the name of Peter Kairu Kiai (his deceased father).
101. That the 1<sup>st</sup> Defendant having testified that he was allocated the suit property being Naivasha/ Municipality Block 5/517 in 1999 vide a letter of allotment dated 23<sup>rd</sup> April, 1999, that once the allotment letter dated 6<sup>th</sup> June, 1994 was issued, the 1<sup>st</sup> Defendant's allegedly letter issued on 23<sup>rd</sup> April, 1999 was incapable of being issued and/or was irregular, unlawful, null and void. Reliance was placed on the decision in the case of M'Ikiarie M'Rinlenya & another v Gilbert Kabeere Supra and Simon Mbugua Gachuki v City Council of Nairobi & 2 others HCC.1595 of 2002.
102. That Defendant's argument that the allotment dated 6<sup>th</sup> June, 1994, ceased to exist for the reasons that the allottee never complied with the conditions of the allotment for which the allotment letter dated 23<sup>rd</sup> April, 1999 was validly issued to the 1<sup>st</sup> Defendant, that it was trite law that for a subsequent Letters of allotments to be issued, the previous letter of allotment had to be cancelled. That the Defendants failed to show and/or proof that the allotment dated 6<sup>th</sup> June, 1994 had been cancelled before the alleged allotment dated 23<sup>rd</sup> April, 1999 was issued. Reliance was placed on the decision in the case of Harison Mwangi Nyota v Naivasha Municipal Council & 20 others [2019] eKLR.
103. That PW2, who had been a Councilor in 1987, had confirmed that Mr. Peter Kairu, lived on the suit land, and reared Cows and goats and that they planted trees thereon while PW3, an Assistant Director of Land Administration in the Ministry of Lands Headquarters had testified to there having been two files that wherein one showed that the land had been allocated to Peter Kairu in 1995 while the other file that showed that the same had been made in favour of Simon Mitei who was allocated the land in 1999. That he had confirmed that letter dated 6<sup>th</sup> June, 1994 had formed the basis for allocation of the land to Peter wherein there had been a renewal vide a letter of allotment dated 9<sup>th</sup> March, 2011. That Peter Kairu Kiai was the one who had followed the due process.
104. Reliance was placed on the decision in the case of Rukaya Ali Mohamed -vs- David Gikonyo Nambachia & another Kisumu HCCA.9 of 2004 to submit that it was an undisputed fact that the Peter Kairu Kiai was the first allottee of the suit parcel of land.
105. That the Plaintiff has never been refunded the money paid by the Commissioner of Lands, nor was there any communication from the Commissioner that the allotments dated 6<sup>th</sup> June, 1994 was revoked because of the late payments.
106. That the testimony of PW3 that the allotment letter dated 23<sup>rd</sup> April, 1999 to the 1<sup>st</sup> Defendant was fraudulent was not controverted by the Defendants by availing a witness of similar status or expert to proof that indeed it was genuine. That it had been the Plaintiff's case that the allotment of the suit land to the 1<sup>st</sup> Defendant was fraudulently and hence should be cancelled.
107. On the second issue for determination as to whether the certificates of lease issued on the 5<sup>th</sup> April, 2012 and 31<sup>st</sup> May, 2012 in the name of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants should be cancelled, the Plaintiff's submission was that having submitted that the suit land was irregularly, unlawfully and fraudulently allotted to the 1<sup>st</sup> Defendant vide an allotment letter dated 23<sup>rd</sup> April, 1999, after it had been allotted on 6<sup>th</sup> June, 1994, was prima facie that the subsequent Certificates of Lease issued to the Defendants respectively should be cancelled. Reliance was placed on the decision by the Court of Appeal in the



case of *Munyu Maina vs Hiran Gathiba Maina Civil Appeal No. 239 of 2009* and in the case of *Daudi Kiptugen vs Commissioner of Lands & 4 Others* [2015] eKLR among others to submit that the Court had the requisite jurisdiction to order for nullification and cancellation of the 2<sup>nd</sup> Defendant's Certificates of Leases.

108. On the third issues as to whether Costs were payable to the Plaintiff by the Defendants, the Plaintiff's submission was that it had been through the 1<sup>st</sup> and 2<sup>nd</sup> Defendant's actions that he forced her to approach the Court and seek judicial redress to the dispute. That it was therefore her prayer that the court finds that she was entitled to costs.
109. The Plaintiff sought that having discharged her burden of proof, that the Court finds and hold that she Plaintiff is the bona fide owner of the suit parcel of land and subsequently direct the Registrar of lands for Naivasha to rectify the register and register her as the owner thereof.
110. On the other hand, the Defendants, vide their written submissions dated 19<sup>th</sup> March 2025 framed their issues for determination as follows:
  - i. Whether the Plaintiff has any claim to the suit property.
  - ii. Whether the 2<sup>nd</sup> Defendant is the legal owner of the suit property.
  - iii. Whether the Plaintiff has any claim against the Defendants.
  - iv. Who bears the costs of the suit?
111. On the first issue for determination as to whether the Plaintiff had any claim to the suit property, the Defendants submitted that the Plaintiff's claim on the suit property had been premised on a Sale Agreement of 30<sup>th</sup> May 2013 wherein the vendor had been one James Njoroge Kairu who had allegedly acquired the land by virtue of a transfer from his deceased father, one Peter Kairu Kiai who was allegedly allocated the same by the Naivasha Municipal Council, first vide a letter of allotment dated 18<sup>th</sup> January, 1995 which had later been renewed vide an allotment letter dated 9<sup>th</sup> March, 2011. It was their submission that the entire process was flawed in law, un-procedural, illegal and as such legally untenable thus making the Plaintiff's claim unmeritorious.
112. They placed reliance in the decided case of *Ali Mohamed Dagane (Granted Power of Attorney by Abdullahi Muhumed Dagane, suing on behalf of the Estate of Mohamed Haji Dagane) v Hakar Abshir & 3 others* [2021] KEELC 3604 (KLR) to submit that the purported allotment of the suit property to one Peter Kairu had been un-procedural and unlawful for reasons that the law on issuance of allotment letters in respect of unalienated Government lands was that such allotment could only emanate from either the President or the Commissioner for lands. That the Municipal Council could not purport to exercise such mandate. That the said allotment in favour of Peter Kairu by the Municipal Council of Naivasha had therefore been void ab initio .
113. That secondly, even if the said letter of allotment had been issued by the authorized authorities, which was not the case, it was trite law that the allottee had to strictly comply with the terms therein. Reliance was placed in the decided case of *Mbau Saw Mills Ltd v Attorney General for and on behalf of the Commissioner of Lands) & 2 others* [2014] KEHC 4946 (KLR) to submit that despite the alleged allotment letter dated 6<sup>th</sup> June, 1994 having provided in clear terms that the acceptance thereof together with the amount as set therein ought to have been made within sixty (60) days failure to which the offer would lapse, the receipts made availed by the Plaintiff indicated that payment had been made on 29<sup>th</sup> December 1994, which was after the lapse of the sixty (60) days period.



114. That similarly, with respect to the letter of allotment dated 18<sup>th</sup> January 1995, the period of acceptance and payment of Kshs. 33,170/= was within thirty (30) days failing which, the offer would be considered to have lapsed. That the payment of Kshs. 33,420/= had been made in the year 2013 which was outside the prescribed time period.
115. That further, whereas the letter of allotment dated 6<sup>th</sup> June, 1994 produced by the Plaintiff had indicated the acreage of the subject land as 0.36 Hectares, the Part Development Plan (PDP) dated 15<sup>th</sup> March 1999 had clearly indicated that the acreage of the subject land as 0.766 Hectares and which PDP that had been prepared in the year 1992. That subsequently, it was evident that the entire procedure relating to the issuance of the allotment letter to Peter Kairu had been shrouded in mysteries and fraud.
116. Reliance was placed on the decisions in the case of Nelson Kazungu Chai & 9 others v Pwani University [2014] KEELC 109 (KLR) and African Line Transport Co Ltd v Attorney General [2007] KEHC 2621 (KLR) to submit that it was trite law that an allotment letter should be backed up by a PDP. That however, it was clear from the evidence by the Plaintiff that the letters of allotment relied on were at variance with the PDP which had been issued after the said Letters of Allotment as per the evidence of PW3. That these glaring inconsistencies and contradictions left the Court with only one conclusion, that the entire procedure had been fraudulent and unlawful.
117. That moving on, the letter of allotment dated 9<sup>th</sup> March 2011 allegedly renewing the previous letters of allotment was addressed to one Peter Kairu Kiai who admittedly had died sometime in the year 2006 wherein the fee receipt dated 31<sup>st</sup> October, 2013 was indicated to have been made by the said Peter.
118. That PW3 an Assistant Director of Land Administration in the Ministry of Lands Headquarters had confirmed that vide a letter dated 23<sup>rd</sup> March, 2016, the allotment to Peter Kairu was cancelled wherein Peter was supposed to surrender the original allotment letter.
119. That indeed, DW2's evidence was to the effect that the letter from the Cabinet Secretary, Ministry of Lands dated 23<sup>rd</sup> March, 2016 of Ref:232333/30 had confirmed that the letter of allotment Ref No:19447/XX1 dated 19<sup>th</sup> March, 2011 had been cancelled for reason that the same plot had been allocated to another person, the 1<sup>st</sup> Defendant herein who had made payment in the year 2002 and title issued to him and registered in the year 2012.
120. That on the other hand, the letter dated 5<sup>th</sup> April, 2016 of Ref No. CLR/R/95/VOL VI (145) from the Chief Land Registrar had verified and confirmed that the original allottee of the suit property from the Government was the 1<sup>st</sup> Defendant herein and that the property had been transferred to the 2<sup>nd</sup> Defendant. That in any case, the said Chief Land Registrar had neither been sued nor had the said decision been challenged.
121. With regard to the transfer of the suit property from James Njoroge Kairu to the Plaintiff, they hinged their reliance in the decided case of Ngugi v Kimunio (Environment & Land Case E006 of 2023) [2024] KEELC 1518 (KLR) (20 March 2024) (Judgment) to submit that the alleged transfer had been void ab initio in view of the fact that the said James neither had any rights to the suit property nor the capacity to transfer. That whereas the Plaintiff herein had alleged that the suit property had been transferred to James Njoroge Kairu from his father Peter Kairu Kiai vide a transfer indicated to have been effected on 12<sup>th</sup> May 2005, the said transfer had been ineffective and un-procedural hence legally untenable because firstly, Peter Kairu Kiai had no interest in the suit property since the purported allotment of the same to him by the Naivasha Municipal Council had been for all intent and purposes void ab initio notwithstanding the non-compliance with the terms of the said allotment letter.



122. That even if the said allotment letter had for any reason been effective, the same had been issued to Peter Kairu Kiai many years after the purported transfer of the suit property to James Njoroge Kairu and subsequently many years after the death of the allottee. That subsequently, the said allotment letter could not for any reason be said to operate retrospectively so as to deem the said transfer of 12<sup>th</sup> May, 2005 effective.
123. That secondly, even if the said Peter had any legal claim and/or rights as at the time of the said transfer, the same would have been ineffective as it did not comply with the procedure of transferring gifts inter vivos. Reliance was placed in the decided case of *Reginah Nyambura Waitathu v Tarcisio Kagunda Waithatu & 3 others* [2016] KEHC 6160 (KLR) to submit that the purported transfer, having not been witnessed by anyone, was not sufficient proof that there was indeed intention by the donor therein to transfer the suit property to the donee and further that the Plaintiff had equally not demonstrated that the said transfer had been completed. That in any case, the suit property had never at any moment been registered in the name of the said James Njoroge Kairu. That further there had been no payments of the said transfer fees and the clearance certificate fee.
124. Further submission had been that the purported purchase of the suit property by the Plaintiff from the said James was not legal because at the time of the said purchase, the same had not been registered. That further the purchaser had been Power Plant Engineering Services and not the Plaintiff and there had been no proof that the purchase price for the suit property had been paid in full. Subsequently, there had been no legal transfer of the suit property from the said James Njoroge Kairu to the Plaintiff.
125. On the second issue for determination as to whether the 2<sup>nd</sup> Defendant was the legal owner of the suit property, they placed reliance on the provisions of Section 26 of the *Land Registration Act*, 2012 and the decided case of *Harrison Kiambuthi Wanjiru & another v District Land Registrar Nairobi & 3 others* [2022] KEELC 1761 (KLR) to submit that the 1<sup>st</sup> Defendant herein had demonstrated compliance with the procedure from the allotment of his parcel of land by the Commissioner of Lands and the subsequent registration as the proprietor thereof. That his allotment dated 23<sup>rd</sup> April 1999 by the Commissioner of Lands had been accompanied with the PDP dated 15<sup>th</sup> March 1999 reflecting the same acreage wherein he had paid the premium of Kshs. 111,623/= and received a lease on 19<sup>th</sup> March, 2012 which had been registered on the 5<sup>th</sup> April 2012. That subsequently he has sold the land to 2<sup>nd</sup> Defendant via an agreement of sale made on 8<sup>th</sup> March 2012 wherein a transfer was made on 16<sup>th</sup> April, 2012 and a Certificate of Lease dated issued on 31<sup>st</sup> May 2012 in favour of the 2<sup>nd</sup> Defendant.
126. Reliance was placed on the decided case of *Muriithi v Makena 7 Another (Environment and Land Appeal E035 of 2022)* [2024] KEELC 6936 (KLR) to submit that the allegations by the Plaintiff that the Defendants had fraudulently acquired the suit property had been unfounded and unsubstantiated.
127. On the 3<sup>rd</sup> issue for determination as to whether the Plaintiff had any legal claim against the Defendants, they relied on the decisions in the case of *UBA Kenya Bank Limited v Farm Transport and Technical Services Ltd & 5 Others (Civil Suit 286 of 2013)* [2024] KEHC 2805 (KLR) and *Mohamed Bashir Abdulaziz v Monarch Developers Limited & 2 Others* [2022] eKLR to submit that the Plaintiff had no legal claim against them either severally or jointly.
128. Lastly on costs, they placed reliance on the provisions of Section 27 of the *Civil Procedure Act*, 2010 to submit that it was trite that costs were discretionary and ordinarily followed event, to seek that the court be pleased to award them costs.



## **Determination.**

129. I have considered the parties case as pleaded and the evidence as adduced in proof thereof, the able submissions by Counsel, the law and the authorities cited herein.
130. Briefly, the Plaintiffs' case vide her Complaint dated the 24<sup>th</sup> June, 2016 which was amended on 17<sup>th</sup> July, 2018 is that she, having purchased land Ref No Naivasha/Municipality Block 5/517 measuring approximately 0.078 Hectares also known as UNS. Residential Plot No. B2-Moi South Lake Road Naivasha from James Njoroge Kairu vide a sale agreement of 30<sup>th</sup> May 2013, that there be a declaration that she was its proprietor, and that the issuance of letter of allotment to the 1<sup>st</sup> Defendant and Certificate of Lease to the 2<sup>nd</sup> Defendant and registration thereof were null and void, the same be nullified wherein after there be vacant possession or orders of eviction of the Defendants jointly and or severally either by themselves, servants or agents from the said parcel of land.
131. The Defendants case in defence on the other hand was that the agreement between the Plaintiff and one James Njoroge Kairu had not conferred any right to the Plaintiff since the said James had no rights over the suit land to pass to the Plaintiff. That an allotment letter could not be issued by the Naivasha Municipal Council but by the Government of Kenya through Commissioner of Lands hence the allotment letter from Naivasha Municipal Council had been invalid. That indeed, the Plaintiff's letter dated 16<sup>th</sup> December 2013 had been annulled by the land Secretary's letter dated 23<sup>rd</sup> March 2016 which had also cancelled the allotment letter of his father Peter Kairu. That whereas the 1<sup>st</sup> Defendant was an original allottee of the said parcel of land having been allotted the same by the Commissioner of Lands and having fulfilled all the conditions of an allotment therein, the 2<sup>nd</sup> Defendants were purchasers for value of the said parcel of land having had conducted due diligence prior to the purchase wherein they had always been in possession and occupation of the suit land at all times.
132. I have considered the sale agreement dated 30<sup>th</sup> May 2013 which was produced herein as Pf exh 1, wherein the sale agreement was between James Njoroge Kairu as the vendor and Jannita Ndila Daudi trading as Power Plant Engineering Services on the other hand as the purchaser, for the sale of UNS. Residential Plot No. B2-Moi South Lake Road Naivasha measuring 0.36 hectares for a consideration of Ksh. 1,500,000/= and that the vendor had obtained the right to the allotment through succession/transmission of the suit parcel of land from his late father Peter Kairu Kiai.
133. I have further considered the allotment letter dated 6<sup>th</sup> June 1994 herein produced as Pf exh 2 which confirmed that one Peter Kairu Kiara was allotted plot No. B2 (16)/residential/Moi South Lake Road by the Naivasha Municipal Council and where no specification eg the acreage of the said parcel of land had been indicated, and the second Allotment letter dated the 18<sup>th</sup> February 1995 issued to Peter Kairu Kiara for UNS. Residential Plot No. B2-Moi South Lake Road Naivasha measuring 0.36 hectares. These two documents which I find are the foundational documents upon which the Plaintiff's claim is based and which are focal points in the courts determination.
134. I thus find two issues of determination arising herein;
- i. Whether James Njoroge Kairu had a good title to pass.
  - ii. Whether the sale agreement dated 30<sup>th</sup> May 2013 is valid.
135. It is trite that allotment letters do not confer a proprietary right to land but are only a right to receive property or to be allocated on complying with the terms and conditions stated therein and therefore ought to be determined in accordance with the ordinary rules of contract. A litigant therefore who basis his/her interest in land on the foundation of an allotment letter must provide the allotment letter



attached with a part development (PDP) plan from the Commissioner of Lands. The claimant must also have proof that they complied with the conditions set out in the allotment letter being the payment of the stand premium and ground rent having had been paid within the specified timeline. A beacon certificate would also add some weight to the transaction.

136. An allotment letter is therefore a promise or an offer of land, not the final document proving ownership. To pass "good title," the vendor must have a registered title deed for the land. Relying solely on an allotment letter for a land purchase carries significant risks.
137. The Supreme Court in the case of *Torino Enterprises Limited v Attorney General* (Petition 5 (E006) of 2022) [2023] KESC 79 (KLR) (22 September 2023) (Judgment) at paragraphs 60 and 63 had observed as follows:

“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].

.....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 fulfillment 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.’ [Emphasis added]

138. Flowing from the decision by the Supreme Court of Kenya, it emphasized that an allottee cannot transfer a valid title to property unless they acquire a Title Deed through registration. It is the act of registration that confers a transferable title to the land. Therefore until the land is formally registered in the allottee’s name and a title deed is issued, they do not have complete ownership that can be transferred to a third party.
139. In the instance case, apart from being in possession of an alleged letter of allotment, dated the 6<sup>th</sup> June 1994 which to me was a purported letter of allotment from the defunct local authority which did not specify acreage of the parcel of land, the stand premium, or the ground rent.
140. The same had stipulated the acceptance period of sixty (60) days failure to which the offer would lapse. I have considered the receipts produced as Pf exh 20 which indicated that payment had been made on 29<sup>th</sup> December 1994, which was after the lapse of the sixty (60) days period.
141. That similarly, with respect to the letter of allotment dated 18<sup>th</sup> January 1995, the period of acceptance and payment of Kshs. 33,170/= was within thirty (30) days failing which, the offer would be considered to have lapsed. The payment of Kshs. 33,420/= as per Pf exh 19, had been made on 31<sup>st</sup> October 2013 which was outside the prescribed time period. The implication was that because the initial allottee had not complied with the terms of the allotment letter, the offer had lapsed and the land was now available



to be allotted to another person as per the letters produced as Df exh 12. In this case, the offer having lapsed, the initial allottee Mr. Peter Kairu Kiara had no interest to transfer the land to his son who certainly had no interest either to pass to the Plaintiff vide the impugned sale agreement of 30<sup>th</sup> May 2013. Indeed, therefore the whole transaction between James Njoroge Kairu and the Plaintiff were a nullity in law.

142. This was further evidenced by the production of the letters as Df exh 19, requesting Peter Kairu to return the original letter of allotment and payment of the receipt for refund, a letter dated 11<sup>th</sup> October 2012 produced as Df exh 12, from the Ministry of lands which had confirmed that the suit land had been re-allocated to the 1<sup>st</sup> Defendant, a letter dated the 5<sup>th</sup> April 2016 herein produced as Df exh 15, to the DCIO from the Ministry of Lands confirming that the land had been allotted to the 1<sup>st</sup> Defendant and subsequently transferred to the 2<sup>nd</sup> Defendant wherein a lease had been issued.
143. It is clear that the Plaintiff did not provide any evidence that either she or the initial allottee had complied with any condition set forth in the allotment letters. I therefore find that in the absence of a valid letter of allotment wherein Peter Kairu had accepted the offer by complying with the conditions set out therein, which included payment of the stand premium, ground rent and within the specified timeline as stipulated in the said letter of offer, James Njoroge Kairu had no good title to pass. The sale agreement dated 30<sup>th</sup> May 2013 was therefore null and void abinitio and the Plaintiff herein cannot claim to have any proprietary rights over Title Number Naivasha/Municipality Block 5/517 also known as UNS. Residential Plot No. B2-Moi South Lake Road Naivasha. I thus find no merit in the Plaintiff's case which is herein dismissed with costs.

**DATED AND DELIVERED AT NAIVASHA VIA TEAMS MICROSOFT THIS 19 DAY OF JUNE 2025.**

**M.C. OUNDO**

**ENVIRONMENT & LAND – JUDGE**

