



**Kasuki t/a Glory Secondary School & 2 others v County Government of Kajiado & 2 others
(Environment and Land Case 164 of 2018) [2025] KEELC 4677 (KLR) (19 June 2025) (Judgment)**

Neutral citation: [2025] KEELC 4677 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT AND LAND CASE 164 OF 2018
LC KOMINGOI, J
JUNE 19, 2025**

BETWEEN

**FRANCIS NZIOKI KASUKI T/A GLORY SECONDARY
SCHOOL 1ST PLAINTIFF
AARON NYAMBU NJOROGE T/A AMAN BRIGHT FUTURE SECONDARY
SCHOOL 2ND PLAINTIFF
STEPHEN MWANGI 3RD PLAINTIFF**

AND

**THE COUNTY GOVERNMENT OF KAJIADO 1ST DEFENDANT
COUNTY SECRETARY, COUNTY GOVERNMENT OF KAJIADO 2ND
DEFENDANT
HENRY KIMITI ALIAS NDOVU 3RD DEFENDANT**

JUDGMENT

1. By the Plaint dated 26th June 2015, first filed at the ELC Nairobi before it was transferred to this Court.
2. It is the 1st Plaintiff's case that he is the owner of Plot No. 951 Emali Trading Centre measuring approximately 10 acres having been allotted the same by the 1st Defendant (the defunct Ol Kejuado County Council) sometime in the year 2006. The 1st Plaintiff developed it by constructing a private secondary school by the name Glory Secondary School on four (4) acres of the land. He planted eucalyptus trees on the remaining six (6) acres. He also stated that he is registered owner of Plot No. 438 'A' measuring 50 feet by 100 feet also allotted by the 1st Defendant sometime on 27th September 2005. It was also developed.
3. The 2nd Plaintiff stated that he is the registered owner of Plot Nos. 70, 72 and 86B measuring approximately 4.5 acres. He bought them from the original allottee and the same were registered in



his favour by the 1st Defendant on 15th January 2002. He had developed the same and was running a private secondary school by the name Aman Bright Future Secondary School.

4. The 3rd Plaintiff states that he is the beneficial owner of parcel Business plot No. 22 measuring 50 feet by 100 feet allocated sometime in the year 1987 which he had developed and put up commercial buildings.
5. The 3rd Defendant was then a Member of Kajiado County Assembly (MCA) representing Emali Ward in Kajiado County.
6. They claim that on 11th June 2015, the Defendants wrongfully and unlawfully moved into the 1st and 2nd Plaintiffs parcels of land, pulled down the perimeter fences, dug trenches, threatened to demolish the buildings, mutilated water pipes and injured some students in the process by beating them up. As a result, learning was paralysed. Most of the school buildings were marked with a red X and a sign post reading “County Government of Kajiado proposed site for cemetery” was erected in the 1st Plaintiff’s property. The 3rd Plaintiff’s commercial buildings were also marked with a red X with the Defendants threatening to demolish them.
7. The Plaintiffs further claim that the 3rd Defendant had on several occasions with reference to utterances made on 4th June 2015 threatened to evict non- Maasais from the Kajiado side of Emali Trading Centre and repossess the land. The Plaintiffs claimed that the ethnic profiling was unconstitutional and an infringement of their rights to own property anywhere within the Republic of Kenya. They therefore sought for the following orders against the Defendants:
 - a. A declaration that the Defendants act of threatening to, and purporting to repossess plots/ parcels of land lawfully allocated to the Plaintiffs by Olkejuado County Council and destroying the Plaintiff’s developments thereon is wrongful and unlawful.
 - b. An order of permanent injunction restraining the Defendants their agents, servants and contractors, and each and every one of them from trespassing or entering into the Plaintiffs plot Nos. 951, 438 A, 70, 72, 86B and 22 situated in Emali Trading Centre in Kajiado County and cutting trenches thereon, pulling down fences, demolishing buildings and other developments thereon, interrupting learning and other school activities within learning institutions thereon, subdividing, repossessing, re-allocating or in any other way interfering with Plaintiffs’ aforesaid plots/parcels of land.
 - c. General damages for trespass and destruction of property.
 - d. Costs of the suit.
 - e. Any other order that the Hon. Court may deem fit and just to grant.
8. The 1st and 2nd Defendants in their Statement of Defence contested the suit on grounds that it was an abuse of the court process as there was no cause of action against them denying any involvement in the alleged trespass, destruction of property or beating up of students. It is their case that assault being a criminal offence it ought to have been reported to the relevant authorities for investigations and arraignment of the perpetrators which had not been done. They averred that the Plaintiffs did not have legitimate titles to the suit properties to invoke any rights claimed in the suit and that any constructions undertaken on these parcels of land was illegal and unlawful without necessary approvals. They also contended that an Allotment Letter was not title to property and that the 1st Defendant never transferred parcels Plot No. 951/Business Emali T. Centre (10 acres) and Plot No. 438 A to the 1st Plaintiff as claimed. Therefore, the 1st Plaintiff could not stake claim to these properties. They also contended that there was neither a school nor eucalyptus trees on these plots. The 2nd Plaintiff’s claim



to ownership of parcels Plot Nos. 70, 72 and 86B and ownership of the 3rd Plaintiff of plot No. 22 was also contested arguing that an allotment letter did not amount to title to property.

9. They added that even if the Plaintiffs had allotment letters, there was no evidence of how the allotment had been acquired since there was no evidence of a formal application; payment for the allotment; the terms of the allotment were not adhered to; there was no proof that land rates were being paid and the said allotment letters were illegally acquired.
10. The particulars of fraud against the 1st Plaintiff were given as;
 - i. Secretly and fraudulently causing some officials at the then Olkejuado County Council (now 1st defendant herein) to connive with him and fraudulently allocate and transfer land to him under various plot numbers;
 - ii. Fraudulently and purportedly obtaining letter of Allotments and transfer for Plots No. 951/ Business Emali T. Centre, 84/Industrial- Emali T-Centre, 85/Industrial- Emali T. Centre, 86/Industrial- Emali T. Centre and Plot Nos. 91, 438 A and Allotment letter for Secondary School.
 - iii. Fraudulently purporting to have himself register as the owner of the various plots stated in (ii) above; and
 - iv. Falsely claiming to be the owner and or possessing title to the various plots stated in (ii) above.
11. The particulars of fraud against the 2nd Plaintiff were given as:
 - i. Secretly and fraudulently causing some officials at the then Olkejuado County Council (now 1st defendant herein) to connive with him and fraudulently allocate and transfer land to him under various plot numbers;
 - ii. Fraudulently and purportedly obtaining letters of Allotment and transfer for Plots Nos. 70, 72 and 86B.
 - iii. Fraudulently purporting to have himself register as the owner of the three plots stated in (ii) above; and
 - iv. Falsely claiming to be the owner and / or possessing title to the three plots stated in (ii) above.
12. They further averred that the 2nd Plaintiff was categorically advised by the then Olkejuado County Council (1st defendant herein) that the 1st defendant does not allocate Land for private business. It was therefore not clear how he came to obtain land and transfer through allotment process from the 1st defendant
13. The particulars of fraud against the 3rd Plaintiff were given as;

SUBPARA i.

Secretly and fraudulently causing some officials at the then Olkejuado County Council (now 1st defendant herein) to connive with him and fraudulently allocate and transfer land to him under various plot numbers;

SUBPARA ii.

Fraudulently and purportedly obtaining letters of Allotment and transfer for Plots No. 22 situated in Emali Town.

SUBPARA iii.



Fraudulently purporting to have himself register as the owner of the plots stated in (ii) above; and
SUBPARA iv.

Falsely claiming to be the owner and / or possessing title to the plots stated in (ii) above.

14. It is their case that the suit was aimed at frustrating the 1st Defendant's development plans and it should be dismissed with costs.
15. The 3rd Defendant in his statement of defence also contested the suit on grounds that it was an abuse of the Court process on grounds that the Plaintiffs did not disclose a cause of action against him. He contested the allegation that he issued threats which were directed at the Plaintiffs hence not an issue for determination before this Court. He also stated that he had never caused anyone to enter or trespass on the plots of land in question and put the Plaintiffs to strict proof. He also denied the allegation that he made threatening utterances stating that the same ought to have been reported to the police for investigations and preferring charges. Therefore, the suit should be dismissed with costs.

Evidence of the Plaintiffs.

16. PW1, Francis Nzioki Kasuki, the 1st Plaintiff, adopted his witness statement dated 25th May 2018 as his evidence in chief and produced his bundle which was marled as P. Exhibit 1 to 49. He stated that Glory Secondary School and Emali vision Academy both in Emali town were his schools. He sought that the prayers in the Plaint together with compensation at the current market value be awarded.
17. On cross examination he stated that he was the Chairman of Emali Centre residents association and that plot nos. 85 and 91 were his plots as allotted by the Council. A Letter of Allotment dated 13th June 1997 was issued to that effect and he had been paying an annual rent of Kshs. 2,000. He confirmed that one of the conditions of the Letter of allotment was that the plots would be repossessed if not developed within two (2) years. Glory Secondary School was established in the year 2014 and Emali Vision Academy established in 2016. He admitted that these developments were undertaken several years after the Letter of Allotment was issued. He stated that the plots were surveyed but he was not issued a beacon certificate and neither did he have a certificate of lease for the plot although he paid Kshs. 2190 as service charge and Kshs. 500 as survey fees. He stated that he was equally allotted plot No. 91 through an allotment letter dated 13th June 1997, he put up a school in 2014, paid service charge of Kshs. 21,000 and survey fees of Kshs. 1168. He did not have a beacon certificate or certificate of lease for this parcel. While affirming that his schools were private, he was asked to read out paragraph 2 of the letter dated 2nd November 1999 addressed to the 2nd Plaintiff which indicated, "The council does not allocate land for private development..."
18. He further stated that parcels No. 84, 86 and 438A were purchased from other people as per the sale agreements and the land transfers were effected at the County Council offices. He stated that the purchase price was paid in cash. Afterwards, he sought amalgamation of the parcels and change of user as per the letter dated 9th August 2006 addressed to the Town Clerk although it was not stamped as proof of receipt. He was also not aware if the Notice for Change of User was gazetted but he got approvals to construct the schools without the certificate of lease. He then prepared and submitted building plans for approval. He was therefore not aware that the land was reserved for a public cemetery. He also stated that he was issued with a certificate of lease for plot No. 951.
19. He stated that on 11th June 2015 he saw Kajiado County motor vehicles together with about 300 people armed with machetes and clubs singing war songs. They however did not identify themselves as officers of the County Government of Kajiado. He sneaked out of the school compound and sought legal advice. He therefore, did not witness what transpired in the school and none of the County officials was



- charged with any criminal offence. He stated that the letter dated 11th December 2014 was complaining of threats from the County and asked that if the County repossesses the plots issued to him, then he ought to be compensated at the current market value. He did not produce a valuation report to confirm the current market value. He also stated that he had never been issued with a certificate of lease because of a boundary dispute between the Kajiado and Makueni Counties.
20. On re-examination he stated that he applied for issuance of Certificate of lease but the Survey of Kenya claimed that the plot was in Makueni County but the letter of allotment indicated that it was in Kajiado County and there was a letter to support this statement. He stated that when the parcel was allotted to him, he fenced it and planted eucalyptus trees for commercial purposes. He stated that there was a handwritten sale agreement to support purchase of the other parcel from Siloma Nkakuo and the transfer was effected on 7th December 2005. He pointed out that in 2009, the 1st Defendant attempted to evict him. He confirmed that the letter dated 5th January 2006 stated that he had rent arrears while on 31st December 2005 he had been issued with a Rates Clearance Certificate which had not been revoked. He also produced receipts to confirm the said payment. He also produced a letter to show that the Ministry of Education had certified the establishment as well as certificate from the Public Health office, Kajiado County. He stated that there was a letter dated 2nd November 1999 addressed to the 2nd Plaintiff asking for reapplication of registration. That when he purchased the property he sought registration and it was effected. He added that he was shown the plot by the County Surveyor and he had no reason to think that it had been set aside for cemetery purposes.
 21. PW2 Aaron Nyambu Njoroge the 2nd Plaintiff, a poultry farmer at Isinya, Kajiado adopted his witness statement as his evidence in chief. He stated that he had a letter of allotment from Olkejuado County Council in respect to his plots. He stated that he was asked to purchase plot Nos. 70, 72 and 86B from their previous owners and was issued with letter of allotment dated 15th January 2002. He then put up the school in 2008 following approvals from the County.
 22. On cross examination he stated that he applied allocation of land from the County and he got a response that they do not allocate land for private use and/or development. He then purchased his plots from other people – Moses Semera and Timothy Ole Tukai through a sale agreement which was not produced in Court. He stated that before the purchase he carried out a search. The same was not produced in Court. There was no evidence of payment of the purchase price which he said was paid in cash. He went on to state that upon the purchase, the land was registered in favour of Aman Bright Future School. He admitted that one of the conditions was that the plot would be repossessed if it was not developed within two years. He also stated that the land was surveyed but he could not recall the date. There was no evidence that survey fees had been paid. There was also no evidence that the beacon certificate had been issued. There was no evidence that approvals had been sought to construct the school. He had also not applied for issuance of a Title for the land. He stated that he was not aware that the land had been set aside as a public cemetery.
 23. He stated that on 11th March 2015 he saw a tractor and a mob near his premises and he ran away. He was therefore not aware of what transpired and no County Official had been charged with any offence.
 24. On re-examination he stated that in 2015, the school burnt down with all the documents and this was reported to the Police. He stated that he started utilizing the suit property in 2002 and started constructing the school between 2002 and 2008. He added that he had never seen the survey report that was produced in Court by the Defendants and was therefore not aware that the land was reserved for a public cemetery.
 25. PW3 Jane Munyiva Mutua stated that she was a worker at Glory School Secondary school. She adopted her witness statement dated 25th May 2018 as her evidence in chief.



26. On cross examination she stated that she had nothing to prove that she worked at Glory School Secondary school. She stated that there were about two County vehicles and a 'caterpillar' but she did not get the registration numbers of the vehicles. She confirmed that the said vehicles had ferried people with uniforms written Kajiado County. She stated that she was injured in the process and reported the matter to the police. She was not aware if any criminal charges had been filed against the perpetrators and had never been summoned to testify in any case.
27. The 3rd Plaintiff by a notice to withdraw his claim against the Defendants dated 19th October 2018 and filed in court on the 13th November 2018, withdrew his claim against the Defendants with no orders as to costs. On the strength of the said notice, the court marked the 3rd Plaintiff's claim against the defendants as withdrawn accordingly.

Evidence of the 1st & 2nd Defendants.

28. DW1 Joshua Lemaikai, the County Surveyor adopted the 2nd Defendant's bundle of documents and his survey report dated 8th March 2019 as evidence. He stated that the suit plots were reserved for a public cemetery. He stated that this was discovered after devolution when a validation exercise in about 35 to 40 towns was carried out. It was discovered that there was encroachment of public utilities and others had been allotted to private individuals.
29. On cross examination on being referred to D. Exhibit 2 he stated that it was for Nairobi area. He stated that he started working for the County in 2015 and that he was aware that the County was bound by actions of the defunct Ol Kejuado County Council. He stated that his duty in Court was to read and interpret the map which showed that the land had been reserved for public cemetery. He however stated that he had not visited the suit properties to confirm this position. He stated that the records in the maps showed that the land was reserved for a public cemetery. When asked if the plaintiffs were paying rates he stated that he could not confirm as he was not from the Revenue department. He confirmed that the map in court was prepared in 2018 and that the previous maps were present although they had not been produced in Court. On being asked if the older maps and newer maps were different he indicated that while he could not confirm that information since he did not have the previous maps, there was a possibility that they were different.
30. On re-examination he stated that his report had not been challenged by any other survey Report. He stated that the validation exercise was approved by the County Executive Committee and an advertisement put up on the Daily Newspaper.
31. The 3rd Defendant who was duly served neglected to participate in these proceedings.
32. At the close of the oral testimonies parties tendered final written submissions.

Submissions of the 1st and 2nd Plaintiffs.

33. Counsel submitted on the following two issues for determination: Whether the 1st and 2nd Plaintiffs had proved their case and what orders should issue.
34. On whether the 1st and 2nd Plaintiffs had proved their case, counsel submitted that the 1st Plaintiff had produced in evidence proof of ownership of plot No. 951 measuring approximately 10 acres located in Emali Trading Centre. That plot 951 was an amalgamation of three plots being plot No. 85 which had been allotted to him and plots No. 84 and 86 which he purchased from Salome Nikakou and Jeniffer Nzisa. And a certificate of official search was produced to show that indeed this was the position. Counsel submitted that the County Government of Kajiado being the successor of the defunct Olkejuado County Council was vested with all the rights and liabilities of its predecessor.



- Counsel also submitted that the 2nd Plaintiff had equally proved his ownership of plots No. 70, 72 and 86B which he purchased and duly paid the land rates/rent and an allotment letter issued in favour of Aman Bright Future Secondary School.
35. Therefore, they had proved their ownership citing *Wanjao vs Oyugi & another* [2022] KEELC 360 (KLR) which held that once an allotment letter was issued and the conditions therein met, the land in question was no longer available for allotment since the allotment letter conferred absolute right of ownership unless acquired by fraud or misrepresentation.
 36. On the allegation of fraud against the Plaintiffs by the 1st and 2nd Defendants' the same had not been proved and thus the allotment letters issued remained unchallenged. On the allegation that the plots were demarcated for public cemetery, counsel submitted that by 2018 when the physical map was drawn, the plots had long been allocated to the Plaintiffs and there was no land available for demarcation as a public cemetery. Adding that the said map was apparently as a result of a regularisation exercise which none of the Plaintiffs were involved in to defend their properties. Therefore, any exercise that was allegedly undertaken was carried out irregularly without public participation and the results were unconstitutional by trying to divest the Plaintiffs of their property by an unlawful compulsory acquisition process. If the County Government of Kajiado wished to acquire the plots, then they should do so within the legal precincts of compulsory acquisition.
 37. On the issue of general damages for unlawful invasion and destruction of property, counsel submitted that they had provided receipts as evidence of amount of the damaged trees worth of Kshs. 137,710 and were thus entitled to special and general damages as well as costs of the suit.

Submissions of the 1st and 2nd Defendants

38. Counsel submitted on the following issues for determination summarised hereunder.
39. On whether a letter of allotment can pass as good title, counsel submitted that the 1st Plaintiff who is the alleged owner of plot No. 951 which was allocated to him on 15th August 2006 after amalgamation of plots 84, 85, 86 and 91. He supported this using letters of allotment dated 13th June 1997 and 15th August 2006. The 2nd Plaintiff relied on the allotment letter dated 15th January 2002 to prove ownership of parcels No. 70, 72 and 86B. However, allotment letters could not confer title or ownership of land as held by the Supreme Court in *Torino Enterprises Ltd vs Attorney General* [2023] KESC 79 (KLR) and Court of Appeal in *Dr. Joseph NK Arap Ngok vs Justice Moijo Ole Keiyua & 4 others*. Therefore, an allottee must perfect the offer by fulfilling the conditions thereon then acquire title to the land through registration. The act of registration is what confers transferable title. The Plaintiffs were therefore not the registered owners of the property.
40. Counsel went on to submit that they equally did not meet the conditions set because the allotment letter dated 13th June 1997 required the plots to be developed within 2 years but it was until 2006 that the 1st Plaintiff began developing the plots. Similarly, the Plaintiffs ought to have paid annual rent of Kshs. 2,000 but the certificate of search in the Plaintiffs documents showed that there was an arrears of Kshs. 50,525 without explanation. The Plaintiffs also testified that they did not apply for registration of the properties and they did not possess certificates of lease.
41. On whether the letters of allotment held by the Plaintiffs were obtained legally and regularly, counsel submitted that the Plaintiffs ought to have proved that the letters of allotment were legally acquired citing *Munyu Maina vs Hiram Gathiha Maina* [2013] eKLR. Counsel also submitted that as per *Lagat vs Kebut* [2023] KEELC 18432 (KLR) the Plaintiffs did not adhere to the procedure in acquiring a certificate of lease. In this case, it was held that a litigant must first show the allotment letter issued by



Commissioner of Lands. But in the Plaintiffs case, the allotment letters were issued by the Olkejuado County Council although in the repealed Government Lands Act Section 3 and 9 provided that public land was vested in the President and the Commissioner of Lands and that the Municipal Council had no power to dispose of public land as held in *Lagat vs Kebut* (supra) and *Harison Mwangi Nyota vs Naivasha Municipal Council & 20 others* [2019] eKLR. In the current case after the letters were issued by the Olkejuado County Council, no evidence was tendered to show that this allotment was ratified by the Commissioner of Lands.

42. Counsel also pointed out that the letter dated 2nd November 1999 addressed to the 2nd Plaintiff indicated that Olkejuado County Council does not allocate land for private developments. It was therefore questionable, how the same body went to allocate the Plaintiffs land for constructing private schools. Counsel also submitted that the alleged amalgamation request letter did not bear a receipt stamp or evidence that the amalgamation approval was granted. There was also no evidence that the change of user request was approved and a notice gazetted. There was also no evidence that part development plan was drawn and approved prior to the issuance of the allotment letters citing *Nelson Kazungu Chai & 9 others vs Pwani University College* (2014) eKLR. And the suit properties were neither surveyed nor Plaintiffs issued with a beacon certificate. Therefore, the allotment letters were illegally acquired as held in *Dina Management Ltd vs County Government of Mombasa & 5 others* [2023] KESC 30 (KLR).
43. On whether the Plaintiffs had constructed their schools on public land, Counsel submitted that the surveyor testified and produced a survey report dated 8th March 2019 which showed that the suit properties were supposed to be a public cemetery and were neither available for allocation nor had the land been degazetted as public land and available for alienation.
44. On whether the Plaintiffs proved that the 1st and 2nd Defendants invaded the schools and caused destruction, Counsel submitted that he who alleges must prove as per Section 107 of the *Evidence Act*. But the Plaintiffs had not proved their case pointing out that they stated on testimony that when they allegedly saw the Defendants' vehicles, they snuck out of the school compound. Therefore their testimonies were hearsay and inadmissible and the photos produced were of no probative value because they were not supported with an electronic certificate as per Section 106B(2) of the *Evidence Act*. Reference was made to the case of *Speaker of the County Assembly of Kisumu & another vs The Clerk Kisumu County Assembly Service Board & others* [2015] eKLR. Counsel added that the photos did not show the Defendants' employees causing the alleged destruction on the Defendants' motor vehicles on the suit properties.
45. On whether the Plaintiffs were entitled to the reliefs sought, counsel submitted that the Plaintiffs had not established that they were the lawful owners of the suit properties and should be dismissed with costs.

Analysis and Determination

46. I have considered the pleadings, the evidence on record, the written submissions, and the authorities cited. I find that the issues for determination are:
 - i. Whether the Plaintiffs have proved their ownership of the suit properties;
 - ii. What reliefs should issue?;
 - iii. Who should bear costs of the suit?



47. The 1st and 2nd Plaintiffs claim that they are the owners of plots 951 and 438A; and 70, 72 and 86B respectively. Some plots were purchased from different owners while others were allotted to them by the defunct Olkejuado County Council.

48. To support this claim, the 1st Plaintiff produced an Allotment letter for Plot 84 industrial Emali Trading Centre from Olkejuado County Council dated 13th June 1997 in favour of Siloma Nkakuo. The following are the conditions stipulated on the allotment letter:

The Council may repossess without compensation any plot that remains undeveloped 2 years after allocation.

Sale subdivision or charge of the plot may only be done with the written consent of the Council.

All building plans in respect of the plot shall be approved by the Council before execution...

49. From the allotment letter above, it is on record that plot 84 was initially allotted to Siloma Nkakuo but by the agreement dated 4th December 2005, she gave this plot to the 1st Plaintiff on grounds that the 1st Plaintiff had paid her son's school fees. This agreement was signed and attested by three witnesses. This plot would then be transferred to the 1st Plaintiff as per the letter of transfer dated 7th December 2005. Land rates were paid as per the Rates Clearance Certificate dated 8th December 2005. The receipt of the even date shows that Kshs. 4,000 was rent payment, Kshs. 1,000 was penalty and Kshs. 3,000 as fees for the transfer. The Letter of Transfer shows that the site was shown on 9th December 2005.

50. As for Plot 85/Industrial Emali T. Centre, the 1st Plaintiff produced a letter of allotment dated 13th June 1997 in his favour. The site for this plot was shown on 9th December 2005 and the conditions as same as the conditions outlined above for plot 84. Certificate of official search dated 5th January 2006 for Plot No. 85 Industrial Emali T. Centre in Francis Kasuki's name shows it had Kshs. 50,525 as rent due. 10th January 2006 Kshs. 4,000 was paid as rent.

51. Plot No. 86 Industrial Emali T. Centre was acquired by the 1st Plaintiff after it was transferred from Jeniffer Mutie to Francis Kasuki, through the letter dated 3rd December 2005. On 7th December 2005 the plot was transferred, a Rates Clearance Certificate dated 8th December 2005 issued and site shown on 9th December 2005.

52. As for Plot No. 91/Industrial Emali T. Centre, this was allotted to the 1st Plaintiff vide the letter of allotment dated 13th June 1997. The 1st Plaintiff produced a receipt of Kshs. 3,750 dated 30th December 2005 for rent and penalty fees, and receipt dated 10th January 2006 payment of rent of Kshs. 4,000.

53. In a letter dated 9th August 2006 from the 1st Plaintiff - Francis Kasuki to the Town Clerk Olkejuado County Council, he applied for change of user from Industrial to private school and for amalgamation of the above plots No. 84, 85, 86 and 91 and a single Letter of Allotment be issued. While this letter was not signed to confirm receipt by the 1st and 2nd Defendants, there is a Letter of Allotment dated 15th August 2006 for Plot No. 951/Business Emali T. Centre in favour of the 1st Plaintiff. This allotment letter reads: "This plot may be developed for business use only. The Council may repossess (without compensation) any plot that remains undeveloped 2 years after allocation. Amalgamation of Industrial plots Nos. 84, 85, 86 and 91 into one private school (ten acres)." A certificate of search dated 17th March 2008 shows plot No. 951 Business Emali T. Centre was still registered in the 1st Plaintiff's name.

54. As plot No. 438A residential Emali T. Centre, there is an Agreement for sale dated 2nd September 2005 between Jennifer Nzisa Mutie and Francis Kasuki- (the 1st Plaintiff) for consideration of Kshs. 450,000.



- On 20th September 2005 Jennifer Mutie applied for transfer of the plot to the 1st Plaintiff. On 27th September 2005, this plot No. 438A was transferred to the 1st Plaintiff. Receipts of payments of land rents and a Rates Clearance Certificate was issued on 28th September 2005.
55. On 3rd March 2014 a provisional registration of Glory Secondary school was issued by the Principal Secretary Ministry of Education, Science and Technology and on 30th October 2014 a certificate of registration for Glory Secondary School was issued. On 21st July 2015 the school was inspected and given clearance to operate from 2016.
56. The 2nd Plaintiff's produced the following documentation to prove his ownership of the suit properties:
- There is a letter dated 2nd November 1999 from Olkejuado County Council to A. N. Njoroge- the 2nd Plaintiff, which reads: "... I regret to inform you that the Council does not allocate land for private development. However, you are advised to purchase land from willing sellers and re-apply for registration of your school after meeting the laid down requirements and your case will be considered along with others for registration..."
57. He claimed that having been advised by the Council to purchase land from willing sellers then apply for the registration, he approached other people who caused the transfer of their plots to him as follows:
58. On 18th July 2000 plot 70/Industrial Emali T. Centre was transferred from Tenkes Tukai to Aman Bright Future Academy and on the same day plot No 72/ Industrial Emali T. Centre was also transferred from Timothy Ole Tukai to Aman Bright Future Academy and Rates Clearance Certificates issued. On 15th January 2002, a letter of allotment for the School in favour of Aman Bright Future Secondary school was issued. The conditions on the letter read: "This plot may be developed for educational use only. The Council may repossess (without compensation) any plot that remains undeveloped 2 years after allocation... Amalgamation of Industrial plots Nos. 70, 72 and 86B and change of user from Industrial to Education Institution."
59. It is also on record that Aman Bright Future Secondary School has a certificate of registration.
60. The 1st and 2nd Defendants however contested the Plaintiffs legitimacy of ownership on grounds that the allocation and letters of allotment were acquired fraudulently because the 1st Defendant does not allocate land for private businesses. Was this allegation of fraud proved? Other than pleading that the letters of allotment were fraudulently and irregularly acquired, the Defendants did not prove the claim of fraud to the required standard which should be higher than a balance of probabilities although lower than beyond reasonable doubt as held by the Court of Appeal in Elizabeth Kamene Ndolo v George Matata Ndolo [1996] eKLR:
- "... Since the respondent was making a serious charge of forgery or fraud, the standard of proof required of him was obviously higher than that required in ordinary civil cases, namely proof upon a balance of probabilities; but the burden of proof on the respondent was certainly not one beyond a reasonable doubt as in criminal cases..."
61. The Defendants also contested that a letter of allotment did not confer any proprietary rights to the allottee. Indeed a letter of allotment does not confer ownership of the land. It is more like a promise upon meeting certain conditions as held by the Supreme Court of Kenya in Torino Enterprises Limited v Attorney General (2023) KESC 79 (KLR). However, the Plaintiffs claim that they do not have Certificates of Lease for the suit properties due to the boundary dispute between Makueni and Kajiado Counties. They produced a Petition to the Senate regarding the boundary issue. I therefore do not fault the plaintiffs for the lack of registration documents to the suit properties.



62. The Defendants also contested the Plaintiffs' allocations on grounds that the 1st and 2nd Plaintiffs did not follow requisite conditions in allotment of land and because the suit properties had been designated as public land for use as public cemetery. They also denied involvement in the alleged trespass, destruction of property and beating up of students. They further stated that assault being a criminal offence it ought to have been reported to the relevant authorities for investigations and arraignment of the perpetrators and this had not been done.
63. To prove that the suit properties were public land, the Defendants produced a Surveyor's report dated 8th March 2019 and a Part Development Plan (PDP). The Part Development Plan is however illegible, but one can faintly see a portion indicated as Cemetery. The surveyor's report shows that in 2018, the County Government of Kajiado undertook a validation exercise to collect ground data on ownership as per the old letters of allotment from the defunct Olkejuado County Council; compare ground data collected with the available Development Plans or Maps which the County Government inherited from the defunct local authority; prepare Maps and Plans with numbers indicated on all plots as the Maps available had blank areas on the plans and prepare a Map which is consistent in numbering plots. The report shows that following this validation exercise, it was discovered that the Plaintiffs' suit properties were meant to be a public cemetery. The Plaintiffs contested this report on the grounds that they were not present during the validation exercise to prove ownership of their plots.
64. This Court was also not provided with the Part Development Plan or area map at the time when the suit plots were allotted to the Plaintiffs to confirm whether the allotted land was indeed public land.
65. The Plaintiffs also claimed that they were entitled to general damages for the Defendants trespass, destruction of properties and injuries to students. The Defendants argue that this claim was not proved. This Court finds that the photographs produced as exhibits showing felled trees and of school going children was not sufficient proof of the trespass and alleged injuries of students. I agree that the plaintiffs did not satisfy the court that they were entitled to General Damages. I decline to award any.
66. In conclusion I find that, no evidence was adduced to show that the Letters of Allotment held by the 1st and 2nd Plaintiffs were illegally or unlawfully acquired.
67. It is my view that, should there be evidence that the suit properties ought to be public land, then the established legal procedures and mechanisms for reclaiming public land should be followed.
68. The upshot of the matter is that the 1st and 2nd Plaintiffs have proved their case as against the Defendants on a balance of probabilities.
69. Accordingly Judgement is entered for the Plaintiffs as against the Defendants as follows;
 - a. That a declaration is hereby issued that the Defendant's acts of threatening to repossess the plots lawfully allocated to the Plaintiffs by the defunct Ol Kejuado County Council and the destruction to their developments is unlawful.
 - b. That an order of Permanent Injunction is hereby issued restraining the Defendants, their agents, servants and or contractors from trespassing or entering into the Plaintiffs Plots by cutting trenches therein, pulling down fences therein, demolishing buildings, interrupting learning activities, sub-dividing, repossessing, reallocating or in any other way interfering with the Plaintiffs' Plot Nos. 951, 438A, 70, 72, 86B and 22 situated at Emali Trading Centre within Kajiado County.
 - c. That each party do bear own costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 19TH DAY OF JUNE 2025.



L.KOMINGOI

JUDGE.

IN THE PRESENCE OF:

Mr. Mundia for B.M Nzei for the 1st, 2nd Plaintiffs.

Mr. Otieno for the 1st, 2nd Defendants.

N/A for the 3rd Defendant.

Court Assistant – Mutisya.

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