



**Lelei v Koimet & 2 others (Environment & Land Case E020 of 2021)  
[2025] KEELC 4686 (KLR) (19 June 2025) (Judgment)**

Neutral citation: [2025] KEELC 4686 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ELDORET  
ENVIRONMENT & LAND CASE E020 OF 2021**

**JM ONYANGO, J**

**JUNE 19, 2025**

**BETWEEN**

**GEOFFREY KIPKEMBOI LELEI ..... PLAINTIFF**

**AND**

**EZEKIEL CHERUIYOT KOIMET ..... 1<sup>ST</sup> DEFENDANT**

**COUNTY LAND REGISTRAR UASIN GISHU ..... 2<sup>ND</sup> DEFENDANT**

**CHIEF LAND REGISTRAR ..... 3<sup>RD</sup> DEFENDANT**

**JUDGMENT**

1. Geoffrey Kipkemboi Lelei the Plaintiff herein filed suit against the Defendants vide a Plaint dated 30<sup>th</sup> March 2021 and amended on 28<sup>th</sup> April 2021. In the said Amended Plaint, he claims that he is the lawful owner of the property known as Eldoret Municipality Block 15/2323 (hereinafter referred to as the suit property) and that he is entitled to registration as the proprietor thereof. He seeks an order that the title documents held by the 1<sup>st</sup> Defendant in respect of the suit property are illegal, null and void and stand revoked forthwith. He further seeks a mandatory injunction directed at the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants compelling them to register the lease in respect of the suit property in his favour and issue him with title documents within 14 days from the date of the judgment herein. The Plaintiff also seeks a permanent injunction restraining the Defendants, their agents or servants from trespassing onto, entering or in any way interfering with the plaintiff's peaceful possession of the suit property, and in default an eviction order be issued against the defendants.
2. It is the Plaintiff's case that he acquired the suit property from the Government of Kenya through an allotment letter dated 15<sup>th</sup> July 1998 after which he complied with all the conditions in the allotment letter by communicating his acceptance on 30<sup>th</sup> July 1998 and paying the sum of Kshs. 244,100 being stand premium and other charges stated in the said letter on 31<sup>st</sup> July 1998.



3. After making a follow up with the Ministry of Lands and Physical Planning, he eventually executed a lease with the Government of Kenya on 19<sup>th</sup> February 2021. The lease was subsequently forwarded to the County Land Registrar, Uasin Gishu and he paid for registration thereof but on 15<sup>th</sup> March 2021, he established that the Land Registrar had declined to register the said lease and issue him with a Certificate of lease on the grounds that the suit property was already registered in the 1<sup>st</sup> Defendant's name.
4. This is what prompted the Plaintiff to file this suit. He alleged that there was a fraudulent conspiracy between the 1<sup>st</sup> Defendant and unscrupulous officers within the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants' officers at Eldoret Land Registry to unlawfully dispossess him of the suit property thereby defeating his proprietary interest therein.
5. Upon being served with the Plaint and Summons to enter appearance the 1<sup>st</sup> Defendant filed a Statement of Defence dated 24<sup>th</sup> May 2021 which was amended on 11<sup>th</sup> August 2021 to include a Counterclaim denying the Plaintiff's claim. A Further Amended Defence and Counterclaim dated 12.2.25 was filed on 17.2.25 by consent of the parties.
6. In his Defence the 1<sup>st</sup> Defendant denies the Plaintiff's claim. He avers that he was allocated the suit property vide a letter of allotment dated 21<sup>st</sup> January 1991. He communicated his acceptance on 18<sup>th</sup> April 1991 and finished paying the stand premium on 9<sup>th</sup> January 2003. He was subsequently issued with a lease and Certificate of Lease on 17<sup>th</sup> October 2014.
7. In his Counterclaim he claims that the Plaintiff has encroached on the suit property and put up temporary structures yet he has no proprietary interest therein. He therefore prays that he be declared as the rightful owner of the suit property and for an order of eviction against the Plaintiff, his agents or servants.
8. The Plaintiff filed a Reply to the 1<sup>st</sup> Defendant's Defence and Defence to Counterclaim dated 19<sup>th</sup> April 2022 in which he reiterated the contents of his Plaint and denied the 1<sup>st</sup> Defendants Counterclaim. He prayed that the same be dismissed with costs.
9. The 2<sup>nd</sup> and 3<sup>rd</sup> Defendants filed their Statement of Defence dated 27<sup>th</sup> June 2022 denying the Plaintiff's claim against them. They averred that according to their records, the Plaintiff is the rightful allottee of the suit property as his father Augustine Malakwen Lelei was issued with a letter of allotment dated 15<sup>th</sup> November 1990 after which he complied with the terms of the said letter. He then obtained consent to transfer the land to the plaintiff who was subsequently issued with letter of allotment dated 15.7.1998. He duly complied with the terms of the said letter of allotment by paying the sum of Kshs. 244,100 within 30 days. He was subsequently issued with a lease over the suit property.
10. The 2<sup>nd</sup> and 3<sup>rd</sup> defendants averred that even though the suit property was registered in the name of the 1<sup>st</sup> Defendant, it was not possible to ascertain how he became registered as the proprietor of the suit property.
11. The suit was set down for hearing on various dates between 9<sup>th</sup> February 2023 and December 2024 and the each of the parties testified and produced their exhibits.

### **Plaintiff's Case**

12. The Plaintiff who testified as PW1 adopted his witness statement dated 19<sup>th</sup> April 2022 as his evidence in chief. He produced the documents in his List and Bundle of Documents dated 30.3.2021 containing



6 documents and the Supplementary List and Bundle of Documents dated 19<sup>th</sup> April 2022 containing 11 documents as Plaintiff's Exhibits 1-17.

13. He told the court that the suit property was first allocated to his father Augustine Malakwen Lelei following an application which was duly approved. He was then issued with a letter of allotment dated 14<sup>th</sup> November 1990 for an un-surveyed residential plot in Eldoret Municipality. He complied with the terms of the letter by accepting the offer and paying the sum of Kshs. 230,100 on 30<sup>th</sup> November 1990. Following compliance with the conditions in the letter of allotment, the Commissioner of Lands wrote a letter dated 9<sup>th</sup> February 1994 requesting the Director of Surveys to survey the property. After the survey, the property was given the number Eldoret Municipality Block 15/2323.
14. By a letter dated 30<sup>th</sup> April 1998, Augustine Malakwen Lelei requested the Commissioner of Lands for consent to transfer the interest in the suit property to the plaintiff as a gift. A conditional approval was granted on 30<sup>th</sup> June 1998 which required the payment of additional stand premium of Kshs. 19,200 and land rent of Kshs. 1600. The term of the lease was also changed and the same was to run from July 1998 for a period of 99 years.
15. The transfer was effected by the Commissioner of Lands after which the plaintiff was issued with a letter of allotment dated 15<sup>th</sup> July 1998 which required him to pay Kshs. 244,100 within 30 days. The Plaintiff paid the said amount on 31<sup>st</sup> July 1998 in compliance with the letter of allotment. He subsequently made a follow-up through correspondence with the Ministry of Lands.
16. The Plaintiff finally signed a Lease with the Government of Kenya dated 19<sup>th</sup> February 2021. However, when the said lease was forwarded to the Land Registrar Uasin Gishu for registration in his favour, the Land Registrar declined to register the same as the land was already registered in the name of the 1<sup>st</sup> Defendant.
17. The Plaintiff told the court that there was correspondence between the Department of Land Administration and the Survey Department all under the Ministry of Lands and Physical Planning indicating that he is the rightful allottee of the suit property. In particular, he referred to the letter dated 3<sup>rd</sup> December 2020 by the Director of Land Administration addressed to the Director of Surveys informing him that according to their records, the Plaintiff was the rightful allottee of the suit property.
18. It was the Plaintiff's testimony that he had been in possession of the suit property since 1998 and he was doing some chicken farming on the land. He informed the court that before he filed this suit he reported the matter to the Directorate of Criminal Investigations who commenced investigations.
19. Upon cross-examination by counsel for the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants the Plaintiff denied grabbing the suit property. He explained that the suit property was initially allocated to his father as an un-surveyed plot and it was later surveyed and given a number. He stated that his documents were contained in file number 315388 at the Ministry of Lands Headquarters in Nairobi.
20. He explained that there was a difference in the acreage in the letter of allotment issued to his father and the one issued to him because by the time he was issued with an allotment letter, the land had been surveyed and it had been established that the land measured 1.3 hectares as opposed to the estimated acreage indicated in the allotment letter issued to his father.

### **Defendants' Case**

21. The 2<sup>nd</sup> and 3<sup>rd</sup> Defendants called three witnesses who testified as DW1, DW2 and DW3. Andrew Aseri Kirungu who testified as DW1 informed that court that he was an Assistant Land Administration



- Officer in the Ministry of Lands and that he was based in Nairobi. He produced a certified copy of the parcel file in respect of land parcel number Eldoret Municipality Block 15/2323 measuring 1.537Ha.
22. He testified that the suit property was first allocated to Augustine Malakwen Lelei (Plaintiff's father) as an un-surveyed residential plot vide a letter of allotment dated 14.11.1990. He corroborated the Plaintiff's evidence to the effect that the said Augustine Malakwen complied with the conditions in the letter of allotment. Thereafter, the land was surveyed in 1994 and given the number Eldoret Municipality Block 15/2323. The Plaintiff's father later transferred the suit property to the plaintiff after obtaining consent to do so. Upon transfer, the Plaintiff was issued with a new letter of allotment and he was required to pay the sum of Kshs. 244,100 which he paid on 31.7.1998. After the payment, the Director of Survey amended the Registry Index Map (RIM) to reflect the plaintiff as the owner of the plot. They then prepared a lease which they forwarded to the County Land Registrar Eldoret vide a letter dated 19.2.21.
  23. DW1 told the court that according to the records in his custody, the suit property belonged to the Plaintiff. He said he did not have the allotment letter dated 21.1.1992 in the name of Ezekiel Koimet (1<sup>st</sup> Defendant). He confirmed that by 21.1.1992, Augustine Malakwen Lelei had been issued with a letter of allotment and he had already paid for it, therefore, the land was not available for allocation to somebody else. He maintained that as far as he was concerned the documents in the name of Ezekiel Koimet were not in their records and he was seeing them in court for the first time.
  24. Upon being cross-examined by counsel for the 1<sup>st</sup> Defendant he stated that he was an Assistant Director, Land Administration and he was part of the team that keeps the land records but the actual custodian of the correspondence files was one Mary Nyakwaka. He admitted that there are instances when records get lost or they are tampered with. He stated that he was not the one who constructed the Plaintiff's correspondence file. He explained that correspondence files are prepared when the clients avail the documents and there are instances when clients delay to present their documents, therefore it was not unusual to open files after a long time.
  25. He told the court that there are instances when double allocation occurs but this happens before the plots are surveyed. In such cases, whoever pays first is given the land. He told the court that if one does not comply with the conditions in the letter of allotment within the stipulated time, the offer lapses. He maintained that according to his records, the lawful allottee was Geoffrey Lelei.
  26. With regard to the payment made by Geoffrey Lelei he admitted that the receipt did not indicate whether the payment was made by cash or cheque. He stated that there was a forwarding letter referring to a banker's cheque although the cheque number was not indicated in the letter. He denied that there was any collusion in the matter.
  27. Upon being cross-examined by counsel for the Plaintiff DW1 told the court that the documents he had produced were from their correspondence file No. 315388 which was opened on 19.8.2019. He said the documents in the correspondence file were obtained from their general correspondence file No. 31710/XXXV111.
  28. He testified that the first allottee was Augustine Lelei who paid for the plot within 30 days whereas the payment by Ezekiel Koimet was made in 2003 for a letter of allotment issued on 21.1.1992 which demonstrated that Ezekiel Koimet had not complied with the terms of the allotment letter.
  29. He pointed out that the receipt issued to Ezekiel Koimet dated 9.1.2003 for Kshs. 120,900 was for an unsurveyed plot based on file No. 125638, while the receipt dated 24.8.2004 for Kshs. 19,200 in respect of parcel number Eldoret Municipality Block 15/2323 has the file number indicated as 128636. The payments therefore relate to two different files.



30. He stated that the lease in the name of Ezekiel Koimet was prepared on 17.10.2014 after a period of 22 years. He said he had not seen a letter forwarding any amended Registry Index Map in the name of Ezekiel Koimet. However, in response to a letter from the Director of Survey dated 30.11.2020 seeking clarification on who was the rightful owner of the suit property, the Ministry of Lands responded stating that the rightful owner of the suit property was Geoffrey Kipkemboi Lelei.
31. He stated that it was on the basis of the amended RIM that they prepared the lease. He told the court that he had not seen any documents filed by the Land Registrar Uasin Gishu to show the basis upon which they issued the Certificate of Lease to Ezekiel Koimet.
32. In re-examination, DW1 affirmed that he was authorized to testify in court on behalf of the 3<sup>rd</sup> Defendant and the documents he had produced were official records from the Ministry of Lands. He reiterated that if an allottee does not pay the amount indicated in the allotment letter within 30 days, the offer lapses and the plot can be allocated to someone else. He told the court that by the time the letter dated 27.2.2013 purportedly signed by B.L Limo was written, the office of the Commissioner of Lands had been abolished and the Department of Land Administration had been moved to the National Land Commission.
33. Benson Long'olenyang Limo a Senior Land Registrar in the Ministry of Lands based in Ardhi House Nairobi testified as DW2. He adopted his witness statement dated 28.6. 2022 as his evidence in chief. His evidence centered on the letter dated 27.2.2013 forwarding a lease in respect of land parcel number Eldoret Municipality Block 15/2323 to the Land Registrar, Uasin Gishu. He denied signing the said letter on behalf of the Commissioner of Lands. He told the court that by the date of the said letter the office of the Commissioner of Lands had ceased to exist and the Division of Land Administration had been moved to the National Land Commission. It was his testimony that upon learning that his signature had been forged, he filed a complaint with the Directorate of Criminal Investigation and the matter was still under investigation.
34. Upon cross –examination by counsel for the 1<sup>st</sup> Defendant he stated that he was not aware that a Certificate of Lease had been issued in favour of Ezekiel Koimet pursuant to the letter dated 27.2.20213.
35. Sheila Mwei, a Land Registrar in the Ministry of Lands based in Uasin Gishu County testified as DW3. She produced the white card and green card in respect of the suit property showing that it was registered in the name of Ezekiel Cheruiyot Koimet on 17.10.2014.
36. She explained that for one to be issued with a Certificate of Lease, one must be issued with a letter of allotment, after which a survey is done and a ground report prepared. Thereafter a lease is prepared by the land Administration officer in Nairobi then it is forwarded to the Land Registrar for registration. She testified that in the instant case, the lease in favour of Ezekiel Koimet was forwarded vide the letter dated 27.2.2013 and the Lease was registered on 17.10 2014.
37. She further testified that their office received another letter dated 19.2.2021 from the Cabinet Secretary, Ministry of Lands forwarding another lease in respect of the suit property in favour of Geoffrey Kipkeboi Lelei but they could not act on it as they had already registered a lease in favour of Ezekiel Koimet.
38. She produced a copy of the white card, green card, letter dated 27.2.2013, the lease dated 26.1.2012, letter dated 19.2.2021, and letter dated 10.3.2021 as the 2<sup>nd</sup> defendant's exhibits 4-9. She informed the court that their office does not allocate land as the Land Administration office is the one charged with that responsibility. She testified that the office of Land Administration is the one that could confirm the legality of land allocation.



39. On cross-examination, she said she was not aware that Mr. Limo had disowned the letter dated 27.2.2013 nor was she aware that there were investigations concerning the said letter.
40. The 1<sup>st</sup> defendant called Ojwang Omollo Patroba, an Assistant Director of Land Administration based in Ardhi House who testified as DW4. He told the court that they had two correspondence files in respect of the suit property in their custody. The first one is file no. 125638 in the name of Ezekiel Cheruiyot Koimet with an allotment letter issued on 21.1.1991 while the second one is file no. 315388 which has an allotment letter dated 14.11.1990 issued in the name of Geoffrey Kipkemboi Leleli.
41. He told the court that both correspondence files were genuine and though it was not a common occurrence, it happened when there was double allocation. He said that when they come across forged letters of allotment, they institute investigations but if the matter is already in court then they let the court decide. It was his testimony that in this case, an officer from DCI had collected documents relating to the suit property on 31.5.2016 but he was not sure when they completed their investigations. He stated that by the time the investigations commenced, a lease had been prepared in favour of Dr. Ezekiel Koimet and he had been issued with a title. He stated that in scenarios where they had 2 parallel files, two leases could be prepared.
42. Upon cross-examination he confirmed that they had two correspondence files being file no. 125638 and 3153888. He confirmed that they had initially issued a letter of allotment dated 20.4.90 to Ezekiel Koimet in respect of a different parcel of land but the said letter was withdrawn as the land was private property. He was subsequently issued with the letter of allotment dated 21.1.1991 which he accepted on 18.4.91.
43. He explained that the allotment letter normally has conditions including the need to make payments which have to be made within 30 days. He testified that according to the records in their custody, Ezekiel Koimet paid in two instalments on 21.3.1992 and 9.1.2003. On the other hand, Augustine Malakwen accepted the offer and paid the requisite charges within 30 days. He was emphatic that if one does not comply with the conditions in the letter of allotment within 30 days, the offer lapses.
44. DW4 stated that Augustine Malakwen wrote a letter dated 30.4.1998 seeking consent to transfer the land to his son Geoffrey Kipkemboi Lelei. The consent was granted on certain conditions through the letter dated 30.6.1998 after which the transfer was effected through a Transfer form dated 2.7.1998. He told the court that as at the date the transfer was effected, Ezekiel Koimet had not finished paying the amount stated in his letter of allotment.
45. He stated that there must be full compliance with the terms of the allotment letter before land is surveyed and in this case there is a letter dated 15.2.1995 indicating that the land had been surveyed. By this date, Augustine Malakwen had complied with the conditions in the allotment letter while Ezekiel Koimet had not.
46. He confirmed that there was a letter dated 30<sup>th</sup> May 2016 from the Director of Criminal Investigations in file No. 125638 indicating that they were investigating an alleged offence of fraudulent registration of land relating to the suit property but file no. 315388 did not have a similar letter.
47. Re-examined by Mr. Odongo, he stated that he had no reason to doubt the testimony and documents produced by his colleague Mr. Aseri Kirungu (DW1) as the said file was among the documents in their custody.
48. The 1<sup>st</sup> Defendant testified as DW5. He adopted the contents of his witness statement dated 24.5.2021 as his evidence in chief. He produced the documents in his List and bundle of documents filed on 24.5.2021 ad 1<sup>st</sup> Defendant's Exhibits 1 to 9.



49. Upon cross-examination he stated that he was issued with a letter of allotment on 21.1.1991 and he completed payment on 9.1.2003. He stated that the survey was conducted earlier by a private surveyor after he paid the survey fees. Although he stated that he was given the deed plan, he did not produce a copy thereof as his exhibit.
50. He confirmed that the Plaintiff was currently in occupation of the suit property although he claimed he had occupied it before this case was filed. He conceded that he had been issued with an allotment letter dated 20.4.1990 for a different parcel of land which letter was subsequently withdrawn.
51. He further conceded that the letter dated 27.2.2013 which he produced as part of his exhibits and the one at folio 7 in his Supplementary List of documents though purportedly signed by the same person, on the same date, bears different signatures. He said that he had never received any complaint that any of his documents were forged. He stated that he filed a complaint with the DCI when he learnt that other people were holding documents relating to his land.
52. With that evidence the Defendants closed their case after which parties were directed to file their final submissions. All the parties filed their submissions which I have taken into account in arriving at my decision.

### **Plaintiff's Submissions**

53. The Plaintiff's submissions dated 29.11.24 were filed by Mr. Odunga Advocate instructed by the firm of Rapando & Odunga Advocates. After summarizing the evidence, counsel for the Plaintiff identified the following issues for determination:
  - i. Who between the Plaintiff and the 1<sup>st</sup> Defendant is the lawful owner of the suit property?
  - ii. Whether the 1<sup>st</sup> defendant has a valid title to the suit property;
  - iii. In whose favour was the suit property validly surveyed?
  - iv. Who between the Plaintiff and the 1<sup>st</sup> Defendant has proved the allegations fraud to the required standard?
  - v. What orders should the court issue to meet the ends of justice?
54. With regard to the first issue, counsel submitted that it was uncontested that both the Plaintiff and the 1<sup>st</sup> Defendant were claiming an interest in the suit property on account of government allocation. He cited the case of Ahmed v Wamalwa ( sued as the legal representative of the estate of Cornelius Wanyonyi Wamalwa-deceased ) & 5 Others [2024]KEELC 4772 where Cheron J summarized the process of acquisition of an interest in property through government allocation as follows:

“Having set out in detail the necessary steps to be followed in the acquisition of government land , it behooves a litigant basing his interest in land on the basis of a letter of allotment to provide the following proof: First, the allotment letter form the Commissioner of Lands; secondly, a Part Development Plan attached to the allotment letter; Thirdly, proof that they complied with the conditions set out in the allotment letter, primarily that he stand premium and ground rent were paid within the specified timeline given”
55. Counsel submitted that in support of his claim the Plaintiff had produced evidence to demonstrate that the suit property was first allocated to his father, Mr. Augustine Malakwen LeleI (Deceased) as an unsurveyed plot vide an allotment letter Ref XXXV111 dated 14<sup>th</sup> November1990 following an application dated 1<sup>st</sup> November 1990 addressed to President Daniel T. Arap Moi and the



Commissioner of Lands. The Plaintiff also produced the letter of acceptance dated 30<sup>th</sup> November 1990 in which his father enclosed a banker's cheque for Kshs. 230,000 and a receipt for the said amount issued by the Department of Lands. The said records were also produced by DW4. He submitted that unlike the Plaintiff who complied with the conditions in the letter of allotment, the 1<sup>st</sup> Defendant produced a letter of allotment dated 21<sup>st</sup> January 1991, a letter of acceptance dated 18<sup>th</sup> April 1991 and two receipts dated 31<sup>st</sup> March 1992 and 9<sup>th</sup> January 2003 which demonstrated that he had not complied with the conditions in the letter of allotment.

56. It was counsel's submission that the Plaintiff's father having complied with the conditions in the allotment letter, the said letter became operative and he obtained an interest in the suit property. Through a letter dated 30<sup>th</sup> April 1998, the plaintiff's father requested for consent to transfer his interest to the Plaintiff as a gift. The Commissioner of Lands granted his consent vide a letter dated 30<sup>th</sup> June 1998 which set out the conditions upon which the transfer would be allowed, including payment of additional stand premium.
57. Counsel submitted that the Plaintiff complied with the said conditions after which he was issued with a new letter of allotment dated 15<sup>th</sup> July 1998 which required him to pay Kshs. 244,100 as stand premium to reflect the increased acreage of the land after survey. Counsel submitted that DW1 and DW4 who are both Assistant Land Administration Officers in the Ministry of Lands explained that it was procedural to issue a new letter of allotment after transfer if the terms had changed. He relied on Civil Appeal No.E688 of 2022 Muvokanza Limited v Nadmart Falls Kenya Limited and 4 Others where the Court of Appeal dealt with a similar case where an allottee successfully applied to transfer its interest to a sister company that was subsequently issued with a new allotment letter.
58. It was counsel's submission that the plaintiff had produced an acceptance letter dated 30<sup>th</sup> July 1998 and a receipt dated 31.7.1998 for the sum of Kshs. 244,1000 to demonstrate that he had complied with the conditions in his letter of allotment within the requisite period. Counsel submitted that the Plaintiff's father having complied with the conditions stipulated in the letter of allotment, he obtained an interest in the suit property and it was no longer available for reallocation. He relied on the case of Republic v County Council of Nairobi & 3 Others (2014) eKLR where Odunga J (as he then was) pronounced himself thus:

“Once an allotment letter is issued and the allottee meets the conditions therein, the land in question is no longer available for allotment since a letter of allotment confers absolute right of ownership unless it is challenged by the allotting authority or it is acquired through fraud, mistake or misrepresentation or that the allotment was outrightly illegal or it was against public interest. In other words, where land has been allocated, the same land cannot be reallocated unless the first allocation is validly and lawfully cancelled”.

59. Counsel further submitted that even assuming that the 1<sup>st</sup> Defendant was lawfully allocated the suit property vide the letter of allotment dated 21<sup>st</sup> January 1991, he failed to comply with the conditions therein within 30 days and the offer automatically lapsed. He relied on the case of Torino Enterprises Limited v Attorney General (Petition 5(E006) of 2022 [2023] KESC 79 (22 September 2023 Judgment where the Supreme Court pronounced itself on the effect of failure to comply with the terms of an allotment letter as follow

“While the allotment letter is dated December 19,1999, Renton Company Limited made the specified payments on April 24,2001, one hundred and twenty seven (127) days from the date of the offer. It is not in question that Renton had not complied with the terms and



conditions of the allotment letter. Therefore, the letter ought to have been deemed as lapsed at the time it purported to transfer the same to the appellant.”

60. Based on evidence placed before the court which demonstrates that the Plaintiff had satisfied the evidentiary and legal threshold highlighted in the case of *Ahmed v Wamalwa & 5 Others* (supra), counsel urged the court to find that the Plaintiff is the lawful owner of the suit property.
61. On whether the 1<sup>st</sup> Defendant’s title was valid, counsel submitted that even though section 26 of the *Land Registration Act* provides that a certificate of registration confers absolute ownership on the person named in the said certificate as the owner of the land, the certificate can be challenged where it is demonstrated that the certificate was acquired either by means of fraud, mistake or illegally, unprocedurally or through a corrupt scheme.
62. Counsel relied on the case of *Munyu Maina vs. Hiram Gathiha Maina* [2013] eKLR for the proposition that where a registered proprietor’s title is challenged, he must go beyond the title to prove that he acquired it legally and free from any encumbrances. He also relied on the case of *Dina Management Limited v County Government of Mombasa* where the Supreme Court held that:

“a registered proprietor acquires an absolute and indefeasible title if and only if the allocation was legal, proper and regular. A court of law cannot, on the basis of indefeasibility sanction an illegality or give its seal of approval to an illegal or irregularly obtained title.”
63. Counsel maintained that the 1<sup>st</sup> Defendant did not have a valid title as his title was not obtained legally or procedurally. He attacked the 1<sup>st</sup> Defendant’s title on several grounds. Firstly, he faulted the letter of allotment dated 21<sup>st</sup> January 1991 issued to the 1<sup>st</sup> defendant as it was issued after the Plaintiff’s father had already been issued with a letter of allotment over the suit property on 14<sup>th</sup> November 1990 and complied with the conditions therein, hence the suit property was not available for reallocation.
64. Secondly, he pointed out that the 1<sup>st</sup> Defendant did not comply with the conditions in the letter of allotment as his acceptance letter was dated 18<sup>th</sup> April 1991 and his payments were made on 31<sup>st</sup> March 1992 and 9<sup>th</sup> January 2003 well outside the stipulated period of 30 days. He referred to *Torino Enterprises Limited v Attorney General* (supra).
65. Thirdly, he submitted that the survey allegedly conducted in favour of the 1<sup>st</sup> defendant in 1991 was unprocedural as he had not paid the stand premium or complied with the other conditions in the letter of allotment. He referred to the case of *Nelson Kazungu Chai & 9 others v Pwani University* (2014) eKLR where the court held that a survey can only be conducted after a letter of allotment has been issued and the terms therein complied with.
66. Fourthly, he pointed out that the letter dated 27<sup>th</sup> February 2013 forwarding the 1<sup>st</sup> Defendant’s Lease was not only disowned by DW2, its purported author but it was drawn by the office of Commissioner of Lands yet the said office was already obsolete by the date of the said letter. To make matters worse, the 1<sup>st</sup> Defendant produced a letter dated 27<sup>th</sup> February 2013 which was signed by a different person from the one who signed a similar letter produced by DW4 dated the same day.
67. Fifthly, counsel submitted that the evidence of DW4 did not support the 1<sup>st</sup> Defendant’s claim as he conceded that they could not reallocate land that had already been allocated nor authorize a survey before the conditions in the letter of allotment were complied with. Counsel relied on the cases of *Miroro v Nyarumi & 5 Others* (Environment and Land Case No. 23 of 2019) (2023)KEELC and *Busienei v Alphax College Limited; Kenya Forest Service & Another (Interested Parties)* (Environment



and Land Case No.159 of 2015) KEELC 20248 (KLR) where the court cancelled the titles on the grounds that they had been acquired illegally and unprocedurally.

68. Regarding the survey of the suit property, counsel relied on the decision in *Nelson Kazungu Chai & 9 Others v Pwani University* (supra). He submitted that the 1<sup>st</sup> Defendant had failed to explain how the government authorized the survey of the suit property in his favour in 1991 before he complied with all the conditions in the letter of allotment including communication of acceptance and payment within 30 days. He pointed out that the 1<sup>st</sup> Defendant's letter of allotment dated 21.1.1991 makes no mention of survey fees and the receipts he produced as his exhibits do not reflect payment in respect of survey fees.
69. He argued that the evidence produced by DW4 included a letter by the Commissioner of Lands to the Director of Surveys dated 9<sup>th</sup> February 1994 informing him that the Plaintiff's father had complied with the terms of allotment and requested him to carry out the survey. He was therefore of the opinion that the survey that was conducted in 1994 was in favour of the Plaintiff and not the 1<sup>st</sup> defendant.
70. On whether the 1<sup>st</sup> Defendant had proved the allegations of fraud against the Plaintiff, counsel submitted that it was a settled principle that allegations of fraud must be pleaded and strictly proved. He relied on the case of *Fanikiwa Limited & 3 Others v Sirikwa Squatters Group & 18 Others* (2023) eKLR where the court held as follows:

“ However it is trite law that fraud, which, depending on the circumstances is recognized as a criminal offence must be pleaded and strictly proved. In addition, although the standard of fraud in civil matters is not beyond reasonable doubt, it is higher than proof on balance of probabilities as required in other civil claims.”
71. He contended that the 1<sup>st</sup> Defendant had in his Defence and Counterclaim raised serious allegations against the Plaintiff by claiming that he was seeking to acquire the suit property using forged documents although he did not call any expert witness to prove the alleged forgery. It was his submission that the 1<sup>st</sup> Defendant's attempt to discredit the evidence of the plaintiff by casting doubts on the correspondence file No. 315388 produced by DW4 did not succeed as DW4 asserted that the documents in the said file formed part of the official records at the Ministry of Lands. Further that the 1<sup>st</sup> Defendant's allegation that the Plaintiff's letters of allotment were computer generated was not proved by an expert and DW4 confirmed that they were genuine. He relied on the case of *Pankajkumar Hemraj Shah & Another v Abbas Lalji Ahmed & 5 Others* (2019) eKLR where the court was of the view that since allegations of fraud impute criminal intent, they must be critically analyzed to ensure they meet the required standard.
72. It was counsel's contention that on his part, the Plaintiff had demonstrated that the 1<sup>st</sup> Defendant's interest in the suit property was acquired illegally, irregularly or unprocedurally. He submitted that correspondence file No. 123568 which contains the 1<sup>st</sup> defendant's documents relates to a different letter of allotment which had been issued to him but was subsequently cancelled. He pointed out that the 1<sup>st</sup> Defendant's receipt dated 24<sup>th</sup> August 2004 relates to a different file, No. 128636. Additionally, the letter forwarding the 1<sup>st</sup> defendant's Lease to the Land Registrar was disowned by the person who is alleged to have signed it. He submitted that that the 1<sup>st</sup> Defendant's explanation that he obtained the original copy of the lease and presented it to the Land Registrar Uasin Gishu for registration was contrary to the normal procedure as the leases are usually forwarded directly to Land Registrars for registration.



73. He submitted that DW4 told the court that there was a letter dated 30<sup>th</sup> May 2016 in file no. 125638 indicating that the matter was being investigated on account of alleged fraudulent registration but file no. 315388 did not have a similar letter. It was his submission that these inconsistencies pointed to fraud on the part of the 1<sup>st</sup> Defendant. He relied on the case of *Martev Guest House limited v Njenga & 3 others* (Civil Appeal 400 of 2018) [20220 KECA 539 (28 April 2022) where the court held that fraudulent conduct had to be distinctly alleged and proved and it was not allowable to leave fraud to be inferred from the facts. He therefore urged the court to grant the prayers sought by the Plaintiff.

### **1<sup>st</sup> Defendant's Submissions**

74. Mr Yego, learned counsel for the 1<sup>st</sup> defendant summarized the case as presented by the parties and distilled the following issues for determination:

- i. Who between the Plaintiff and the 1<sup>st</sup> Defendant is the lawful proprietor of land parcel number Eldoret Municipality block 15/23/23?
- ii. Whether the 1<sup>st</sup> Defendant's Certificate of Lease ought to be cancelled.
- iii. Whether the 1<sup>st</sup> Defendant's Counterclaim ought to be allowed.
- iv. Who shall bear the costs of the suit

75. With regard to the first issue, counsel submitted that the letter of allotment dated 15<sup>th</sup> July 1998 goes against the rule of allotments that once a parcel of land has been allotted, the said parcel of land is no longer available for re-allocation. He argued that if the Commissioner of Lands endorses a transfer, the transferee ought to continue with the allotment process as opposed to being issued with a new allotment letter with new conditions. He referred to special condition No. 8 in the letter of allotment which requires that a transfer be can only be effected with the consent in writing of the Commissioner of Lands. He also referred to condition No. 2 of the lease which stipulates that a transfer of lease can only be effected if the lessee has submitted building plan within a period of six months after registration.

76. Counsel cast doubts on whether the plaintiff had fulfilled the conditions in the letter of allotment as his letter of acceptance in which he mentioned that he had paid the sum of Kshs. 244,100 did not bear the cheque number nor was a copy of the said cheque attached. He claimed that the letter of allotment did not bear the parcel number. He relied on the case of *Wreck Motors v Commissioner of Land & 3 Others* (1997) KECA 391 (KLR) and *Harold Gerald Ruigi v Joseph Ougo & 11 others* (2008) KEHC 1962 KLR for the proposition that a letter of allotment does not amount to a title.

77. It was counsel's contention that the suit property came into existence in 1991 after the 1<sup>st</sup> Defendant was issued with a letter of allotment after which correspondence file no. 125638 was opened. He claimed that the plaintiff's file No. 315388 which was belatedly opened on June 2019 contained backdated documents. He wondered why no file was opened in the name of Augustine Malakwen Lelei who is alleged to have been eh first allottee.

78. Counsel insisted that the allotment letter issued to Augustine Malakwen Lelei in 1990 was computer generated yet computers were not in common usage at the time. He added that the receipt for the sum of Kshs. 230,000 issued to Augustine Malakwen Lelei did not bear the cheque number hence he doubted whether the said payment had been made. He further submitted that the consent letter was not signed by Augustine Malakwen Lelei nor was it endorsed by the former President Daniel Arap Moi.

79. He was of the opinion that the Plaintiff had failed to prove that he was the lawful owner of the suit property and that he had hatched a corrupt scheme to acquire the suit property using forged documents. He relied on the case of *Susan K. Baur & Alfred Jean Claude Bieri v Shashikant Shamji*



- Shah & 2 Others ( 2017) KEELC 233 ( KLR) where the court held that it could not condone the back-dating of documents as that would amount to abetting an illegal activity.
80. It was counsel's submission that the 1<sup>st</sup> Defendant had proved that he was the owner of the suit property pursuant to an allotment letter dated 21<sup>st</sup> January 1991, meeting the conditions therein and being issued with a Certificate of Lease dated 17<sup>th</sup> October 2014. He relied on section 26 of the Land Registration Act, 2012. He further relied on the case of Margaret Njeri Wachira v Eliud Waweru Njenga ( 2018 ) KEELC 2703 ( KLR) where the court held that courts are mandated by statute to consider a title document as prima facie evidence of ownership to land and that the title can only be challenged on the grounds stipulated in section 26 (1) ( a) and (b) of the Land Registration Act.
  81. Relying on the case of M'Ikiara M'Rinkanya & Another v Gilbert Kabeere M'Mbijiwe ( 1982-1988) 1KAR 196, where the court held that in the event of double allocation, the first in time prevails, counsel submitted that the 1<sup>st</sup> Defendant's was the first to be allocated the suit property in 1991 and it could therefore not be re-allocated to the Plaintiff in 1998. He relied on the case of Dr. Joseph Arap Ng'ok v Justice Moijo Ole Keiwa & 5 Others (1997) eKLR and urged the court to uphold the 1<sup>st</sup> Defendant's title as he had validly acquired the same and the Plaintiff had not pleaded, particularized or proved any fraud against him.
  82. On whether the 1<sup>st</sup> Defendant's Certificate of Lease ought to be cancelled, counsel submitted that the 1<sup>st</sup> Defendant had proved that he was the legal proprietor of the suit property. He faulted the Plaintiff for failing to call Augustine Malakwen Lelei as a witness and submitted that there was no proof that the said Augustine was the Plaintiff's father. He relied on the case of Hubert L. Martin & Another v Margaret J. Kamar & 5 Others (2016) KEELC 1092 (KLR) where the court faulted the Plaintiff for failing to call a witness who would have shed light on how the Plaintiff acquired the title to suit property. He was of the view that the manner in which Augustine Malakwen Lelei acquired the allotment letter and subsequently transferred it to the Plaintiff was shrouded in secrecy hence he should have been called to shed light on the alleged acquisition and transfer.
  83. Counsel dismissed the Plaintiff's correspondence file no. 315388 and the documents therein as being of no legal effect as the said file was opened 5 years after the Plaintiff was issued with a title and stated that the same could not oust the 1<sup>st</sup> Defendant's title.
  84. It was counsel's submission that the Plaintiff had neither pleaded nor particularized the allegations of fraud in his pleadings. He added that the Plaintiff had failed to demonstrate how the 1<sup>st</sup> Defendant participated in the alleged acts of fraud in the acquisition of his letter of allotment or Certificate of Lease and therefore the 1<sup>st</sup> Defendant's Certificate of Lease was indefeasible. He relied on the cases of Vijay Morjaraia v Nansingh Madhusingh Darbar & Another (2000) eKLR; Christine Oyende & Another v Henry Makhumbiri Mukolwe (2020) eKLR and Sabala & 2 Others v Isutsa & 3 Others (2024) KEELC 275 (KLR) for the proposition that allegations of fraud must be specifically pleaded, particularized and proved.
  85. Counsel submitted that on his part the 1<sup>st</sup> Defendant had been able to trace the root of his title by adducing evidence from the time he was issued with the letter of allotment on 21.1.1991, accepted the offer and made the first payment on 15.4.1991, made the second payments on 9.10.2003 after allegedly obtaining an extension of time. He was finally issued with a lease on 26.1.2012 and a Certificate of lease on 17.10.2014. He relied on the case of Mike Maina Kamau v Attorney General (2017) eKLR where the court affirmed the Plaintiff's title as there was no evidence that he had been involved in fraud or irregular registration of the suit property.



86. He urged the court not to cancel the 1<sup>st</sup> defendant's title as it had met the threshold of indefeasibility under section 26 of the [Land Registration Act](#) and it was protected under Article 40 of the [Constitution](#), 2010.
87. With regard to the 1<sup>st</sup> Defendant's Counterclaim, counsel submitted that since the 1<sup>st</sup> Defendant had demonstrated that he was the lawful owner of the suit property, he was entitled to exclusive possession thereof. He relied on the case of M'Ikiara M'Rinkanya & Another (supra) and urged that the Plaintiff be evicted from the suit property as he had no lawful claim thereto.

### **2<sup>nd</sup> and 3<sup>rd</sup> Defendants' Submissions**

88. The 2<sup>nd</sup> and 3<sup>rd</sup> Defendants' submissions dated 17<sup>th</sup> February 2025 were filed by Mr Ondongo, Principal State Counsel. After summarizing the pleadings and evidence counsel outlined the procedure/steps for disposing of unalienated government land under the Government Lands Act as follows:
- a. Application for allocation for allocation of unalienated land to the Commissioner of Lands
  - b. If the land is available, an allotment letter would issue to the applicant;
  - c. Upon receipt of the letter of allotment, the applicant to accept the offer within 30 days
  - d. Applicant to comply with terms of offer and make all payments within 30 days
  - e. Failure to accept offer and make payments within 30 days determines and offer;
  - f. In exceptional cases, permission to make payments outside the 30 days could be granted, subject to proving that acceptance was made within 30 days and subject to availability of the land;
  - g. Upon payment, survey would be undertaken and the Registry Index Map (RIM) amended;
  - h. A Lease would be issued by the Commissioner of Lands and forwarded to the District Land Registrar in triplicate;
  - i. Upon receipt of the Lease in triplicate and subject to production of a copy of the letter forwarding the Lease, the District Land Registrar would release to the lessee the Lease in triplicate for execution and attestation;
  - j. Upon execution and attestation, the lease would be presented for registration paid for, booked and registered and a Certificate of Lease issued.
89. He then invited the court to examine the process of allocation of the suit property to the Plaintiff and the 1<sup>st</sup> Defendant.
90. Regarding allocation of the suit property to the Plaintiff, he submitted that the Plaintiff's evidence that an allotment letter had been issued to his father, Augustine Malakwen Lelei on 14.11.1990 was corroborated by DW4 who produced correspondence file No. 315388 and the 1<sup>st</sup> Defendant did not adduce any evidence to controvert this position. Counsel therefore submitted that since Augustine Malakwen Lelei complied with the terms of the allotment letter within the stipulated timeframe, his interest in the suit property crystallized and the land was no longer available for further allocation.
91. It was his submission that the 1<sup>st</sup> Defendant's argument that the plaintiff did not produce a copy of the banker's cheque did not hold any water as DW1 confirmed that production of the official receipt was sufficient evidence of payment. He clarified that at the time of allocation, the suit property was



an unsurveyed plot and it subsequently became parcel number Eldoret Municipality Block 15/2323 after the survey in 1995.

92. Regarding the transfer of the land to the plaintiff counsel submitted that the plaintiff had demonstrated that his father applied for consent to transfer his letter of allotment to him as he produced the letter dated 30.4.1998, a reminder dated 4.5.1998 and a letter dated 30.6.1998 by the Commissioner of Lands indicating that he had granted consent to transfer the letter upon certain conditions. He submitted that contrary to the 1<sup>st</sup> Defendant's assertion that a new letter of allotment should not have been issued to the Plaintiff, DW1 and DW4 confirmed that the conditions in the letter of consent necessitated the issuance of a fresh letter of allotment to the Plaintiff. He dismissed the 1<sup>st</sup> Defendant's contention that the consent was only signed by the plaintiff as the consent produced by DW4 clearly shows that it was signed by the Augustine Malakwen, the Plaintiff and the Commissioner of Lands.
93. Counsel raised several fundamental questions with regards to allocation of the suit property to the 1<sup>st</sup> Defendant. He pointed out that correspondence file no. 125638 was opened in respect of a letter of allotment dated 20.4.1990 which was initially issued to the 1<sup>st</sup> Defendant but it was subsequently cancelled. He wondered why a new file was not opened when the 1<sup>st</sup> Defendant was issued with the letter of allotment dated 21.1.1991 and he was of the view that such failure tainted the process through which the 1<sup>st</sup> Defendant acquired his title.
94. The second issue raised by counsel was whether the suit property was available for allocation on 21.1.1991 given the fact that the Augustine Malakwen Lelei, Plaintiff's father had been issued with a letter of allotment on 14.11.1990 and complied with the conditions in the said letter by 31.11.1990. He opined that given that position, the 1<sup>st</sup> Defendant's letter of allotment may have been issued by mistake or through misrepresentation.
95. It was his further submission that even assuming the suit property was available for allocation to the 1<sup>st</sup> defendant, it was doubtful whether he could have acquired any interest in the suit property as he did not meet the conditions in the letter of allotment within 30 days nor did he produce any document to show that he had been allowed to comply out of time. He was of the view that regulatory timelines are not imposed for cosmetic purposes nor should they be selectively applied and failure to comply with the stipulated timelines has consequences. He relied on the cases of Japheth Okumu Olual v County Government of Kisumu & 2 Others (2019) eKLR, Bukabi Investment Company Limited v National Land Commission (2015) eKLR where the court held that the petitioner had not acquired any proprietary interest in the suit property as he had failed to comply with the terms of the allotment letter within 30 days. He submitted that where there is non-compliance with the terms of the allotment letter, the offer automatically lapses. Conversely, where the allottee complies with the terms of the allotment letter, the same becomes operative. He relied on the case of Mako Abdi Dolai v Ali Duane & 2 Others (2019) eKLR.
96. The third issue concerns the survey which is a necessary step after compliance with the conditions of allocation. Counsel submitted that the evidence of DW4 and the letter dated 15.2.1995 in the Plaintiff's correspondence file pointed to the fact that the survey was conducted in favour of Augustine Malakwen.
97. Commenting on the concept of double allocation, counsel submitted that this would only occur if two titles or allotment letters were issued lawfully and procedurally by mistake and both parties were claiming an interest in the same parcel of land. In such a scenario, the first in time always prevails. See the case of Gitwany investment Limited v Tajmal Limited (2006) eKLR.



98. It was counsel's submission that even though section 26 of the *Land Registration Act* recognizes a certificate of title as prima facie evidence of ownership, the title can be challenged where it is shown to have been acquired illegally, unprocedurally or through a corrupt scheme and that where a title is under challenge, the registered owner must demonstrate that he acquired it lawfully. See the case of *Munyu Maina v Hiram Gathina* (supra),
99. Additionally, he submitted that the concept of indefeasibility is subject to article 40(6) of the *Constitution* which only protects a title that has been lawfully acquired. He relied on *Funzi Island Development Limited Lands & 2 Others v County Council of Kwale & 2 Others* (2014) eKLR, *Henry Muthee Kathurima v Commissioner of Lands & Another and Republic v Land Registrar of Kilifi & Another Ex parte Ricci* (2013) eKLR.
100. He concluded that according to his analysis the Plaintiff's evidence appeared consistent, convincing and persuasive. He was of the view that the Land Registrar was justified in declining to register the Plaintiff's lease after discovering that the land was already registered in favour of the 1<sup>st</sup> Defendant but it was up to the court to determine if the 1<sup>st</sup> Defendant's title should be revoked.

### **Analysis and Determination**

101. I have carefully considered the pleadings, oral and documentary evidence presented by the parties, the submissions and authorities cited to me as well as the relevant law. The main issues for determination are
  - i. Who between the Plaintiff and the 1<sup>st</sup> defendant is the lawful owner of land parcel no. Eldoret Municipality Block 15/2323?
  - ii. Whether the Plaintiff is entitled to the reliefs sought in the Plaintiff's plaint?
  - iii. Whether the 1<sup>st</sup> defendant is entitled to the reliefs sought in the Counterclaim.
102. It is not in dispute that the suit property is registered in the name of the 1<sup>st</sup> Defendant. However, the Plaintiff has challenged the 1<sup>st</sup> Defendant's title on various grounds as he claims to be the lawful owner of the suit property.
103. The Court of Appeal in the case of *Munyu Maina vs. Hiram Gathiha Maina* [2013] eKLR, held as follows:
 

“We state that when a registered proprietor's root of title is under challenge, it is not sufficient to dangle the instrument of title as proof of ownership. It is this instrument of title that is in challenge and the registered proprietor must go beyond the instrument and prove the legality of how he acquired the title and show that the acquisition was legal, formal and free from any encumbrances including any and all interests which need not be noted on the register.”
104. In order to determine who holds a valid title to the suit property it is important to trace how both the plaintiff and the 1<sup>st</sup> defendant acquired their interests in the suit property. Under sections 3 and 9 of the Government *Land Act* Cap 280 of the Laws of Kenya (now repealed), the President and Commissioner of Lands were vested with the power to allocate unalienated government land to individuals.
105. The process of disposing of unalienated government land was laid out in the said Act. As correctly submitted by learned counsel for the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants the steps include the sending an application for allocation of unalienated government land to the Commissioner of Lands, issuance of a letter of



allotment accompanied by a Part Development Plan, communication of acceptance and compliance with the conditions in the letter of allotment within 30 days failing which the offer would automatically lapse. In exceptional cases the Commissioner of Lands would extend time for making payment after the offer had been accepted. Once the allottee pays the stand premium and other charges stipulated in the letter of allotment within the stipulated period, the land is surveyed and assigned a number after which the Registry Index Map amended. The Commissioner of Lands would then issue a Lease which would be forwarded to the relevant District Land Registrar for registration and issuance of the Certificate of Lease.

106. From the evidence on record, both the plaintiff and the 1<sup>st</sup> defendant were issued with letters of allotment. The plaintiff's version is that his father Augustine Malakwen Lelei was first issued with a letter of allotment dated 14<sup>th</sup> November 1990. He accepted the offer in writing by a letter dated 30.11.1990 and paid Kshs 230,100 being the stand premium and other charges indicated in the said letter as per the receipt dated 30.11.1990.
107. The land was subsequently surveyed as per the letter dated 15<sup>th</sup> February 1995. Thereafter, the Plaintiff's father sought the consent of the Commissioner of Lands to transfer his letter of allotment to the plaintiff vide a letter dated 9<sup>th</sup> June 1998. By a letter dated 30<sup>th</sup> June 1998, the Commissioner of Lands approved the transfer on certain conditions and a Transfer Form signed by the Commissioner of Lands, Augustine Malakwen Lelei and Geoffrey Kipkemboi Lelei (plaintiff) was registered on 2<sup>nd</sup> July 1998.
108. Following the transfer, the plaintiff was issued with a new letter of allotment dated 15<sup>th</sup> July 1998. He accepted the offer vide a letter dated 30.7.1998 and followed it up with a payment of Kshs.244,100 vide receipt no. B305722 dated 31.7.1998. However, when the lease prepared in favour of the plaintiff was forwarded to the Land Registrar, Uasin Gishu vide a letter dated 19<sup>th</sup> February 2021 he was advised that the said lease could not be registered as the suit property had already been registered in another person's name.
109. The 1<sup>st</sup> Defendant's version is that he was issued with a letter of allotment dated 21.1.1991. He accepted the offer vide his letter of acceptance dated 15<sup>th</sup> April 1991 followed by part payment of Kshs. 32,290 vide receipt no. C278093 dated 31.3. 1992 and a second payment of Kshs. 120, 900 vide receipt No. F 275780 dated 9.01.2003. A lease dated 26<sup>th</sup> January 2012 was subsequently prepared in his favour and he was issued with a Certificate of Lease dated 17<sup>th</sup> October 2014.
110. From the outset, I must point out that the allotment letter dated 14<sup>th</sup> November 1990 issued to Augustine Malakwen Lelei and the one dated 21<sup>st</sup> January 1991 issued to the 1st Defendant both appear to be genuine as Mr. Ojwang Omollo Patroba, and Assistant Director of Land Administration in the Ministry of Lands confirmed that the 2 letters formed part of their official records. The submission by counsel for the 1<sup>st</sup> defendant that the letter of allotment issued to Augustine Malakwen Lelei was backdated was not supported by any evidence. I also accept the evidence of DW4 that there are 2 files No. 125638 and 315388, suggesting that there may have been double allocation. However, this is an absurd situation stemming from lack of diligence and poor record- keeping by officials at the Lands office.
111. Having analyzed the evidence on record, I am of the considered view that the 1<sup>st</sup> Defendant does not have a good title. I say so for the following reasons; Firstly, by the time the 1<sup>st</sup> Defendant was issued with a letter of allotment on 21.1.1991, Augustine Malakwen Lelei, the Plaintiff's father had already complied with the conditions in the letter of allotment issued to him on 14<sup>th</sup> November 1990 by accepting the offer in writing and paying the requisite charges in the sum of Kshs. 230,100 and the land was therefore not available for re-allocation.



112. In the case of Republic v County Council of Nairobi & 3 Others (2014) eKLR where Odunga J (as he then was) pronounced himself thus:

“Once an allotment letter is issued and the allottee meets the conditions therein, the land in question is no longer available for allotment since a letter of allotment confers absolute right of ownership unless it is challenged by the allotting authority or it is acquired through fraud, mistake or misrepresentation or that the allotment was outrightly illegal or it was against public interest. In other words, where land has been allocated, the same land cannot be reallocated unless the first allocation is validly and lawfully cancelled”.

113. As was held in the case of Mako Abdi Dolai v Ali Duane & 2 Others (2019) eKLR a letter of allotment becomes operative once the allottee has complied with the conditions set out therein, which includes the payment of stand premium, ground rent and other charges within the prescribed timeframe.

114. Secondly, assuming that the land was available for allocation, the 1<sup>st</sup> Defendant did not comply with the terms of the allotment letter which required him to accept the offer and make payment within 30. The 1<sup>st</sup> Defendant testified that he was issued with a letter of allotment dated 21<sup>st</sup> January 1991. He produced a letter dated 15<sup>th</sup> April 1991 accepting the offer. By his own admission at paragraphs 8 of his defence he states that he paid Kshs. 32, 290 on 15<sup>th</sup> April 1991 and Kshs. 120,000 being the final payment on 9<sup>th</sup> January 2003 which was 12 years after the letter of allotment was issued. Although counsel for the 1<sup>st</sup> Defendant submitted that the late payment was made pursuant to an extension granted by the Commissioner of Lands, no such extension was produced by the 1<sup>st</sup> Defendant. As for whether the payments made by the parties were genuine, I have examined the receipts produced by both the Plaintiff and the 1<sup>st</sup> defendant and none of them bear the cheque numbers. However, DW4 confirmed that the receipts are sufficient evidence of payment.

115. The Supreme Court in the case of Torino Enterprises Limited v Attorney General (Petition 5(E006) of 2022 [2023] KESC 79 (22 September 2023) Judgment pronounced itself as follows:

“While the allotment letter is dated December 19,1999, Renton Company Limited made the specified payments on April 24,2001, one hundred and twenty seven (127) days from the date of the offer. It is not in question that Renton had not complied with the terms and conditions of the allotment letter. Therefore, the letter ought to have been deemed as lapsed at the time it purported to transfer the same to the appellant.”

116. Similarly, in Japheth Okumu Olual v County Government of Kisumu & 2 Others (2019) eKLR and in Bukabi Investment Company Limited v National Land Commission & 2 Others (2015) eKLR the court held that the plaintiff did not acquire in proprietary interest in the suit property as he had not complied with the terms of the letter of allotment within 30 days.

117. Guided by the above authorities, it is my finding that by the time the 1<sup>st</sup> Defendant made his payments, the last of which was made 12 years after the letter of allotment was issued, the offer had lapsed.

118. Thirdly, although the 1<sup>st</sup> defendant challenged the transfer of the interest in the suit property from Augustine Malakwen Lelei to the Plaintiff claiming that it was not endorsed by the Commissioner of Lands, this assertion is not supported by the evidence on record as the letter dated 30.6.1998 and Transfer Form dated 2.2.1998 produced by DW4 were both signed by the Commissioner of Lands. DW4 also explained that the Plaintiff was issued with a new letter of allotment because the terms of allotment had changed.



119. The fourth reason relates to the survey. In this regard, DW1 testified that the suit property was surveyed in 1994 pursuant to a letter dated 9.2.1994 from the Commissioner of Lands to the Director of Survey. The suit property was then given a parcel number after which the Registry Index Map was amended. He produced the letters dated 9.2.1998 and 15.2.1995 to confirm this. It is instructive to note that the survey is only conducted after the allottee has complied with the conditions in the letter of allotment. See the case of *Nelson Kazungu Chai & 9 Others v Pwani University (2014) eKLR*. While the plaintiff had paid all the requisite charges in 1990, the 1<sup>st</sup> Defendant had not yet completed his payments. The 1<sup>st</sup> Defendant's evidence that the land was surveyed in 1991 by a private survey is therefore without basis.
120. The fifth reason is the manner in which the lease was forwarded to Eldoret for registration. The 1<sup>st</sup> Defendant testified that he was given the original lease to take to the Land Registrar in Eldoret. He also produced a letter dated 27.2.2013 from the Commissioner of Lands, purportedly signed by Benson Limo Long'olenyang'. However, the said Benson Limo Long'olenyang' who testified as DW2 denied having written the said letter and stated that his signature was forged. He also pointed out that by the time the letter was written on 27.2.2013, the office of the Commissioner of Lands had been dissolved and replaced with the National Land Commission. This means that the instructions to register the lease were irregular and the registration was therefore un-procedural.
121. Lastly, whereas, the Plaintiff was able to demonstrate that he has been in possession of the suit property since 1998, the 1<sup>st</sup> Defendant claimed to have been in possession thereof although he could not state when he took possession and at what point he lost it. Since he admitted that he was aware of the Plaintiff's claim over the suit property since 1998, it is inconceivable that he could have failed to take any action against him.
122. As was held in *Republic v Land Registrar Kilifi & Another ex parte Ricci (supra)*:
- “a title deed is an end product of a process. For a title deed to be protected by Article 40 (1) of the *Constitution*, the holder of the title has to establish that he followed the laid down procedures in acquiring it”.
123. Having examined the root of the 1<sup>st</sup> Defendant's title and the steps leading up to its registration, I am constrained to come to the conclusion that the laid down procedures were not followed and therefore the 1<sup>st</sup> Defendant's title was issued unlawfully, irregularly and unprocedurally. Although no evidence has been placed before the court to prove that the 1<sup>st</sup> Defendant participated in any acts of fraud or misrepresentation, nevertheless his title is not valid as it is the product of a flawed process and is thus impeachable pursuant to the provisions of section 26(1) (b) of the *Land Registration Act*. The said section provides as follows:
- “26(1) The Certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge except-
- a. On the grounds of fraud or misrepresentation to which the person is proved to be a party; or
  - b. Where the certificate of title has been acquired illegally un-procedurally or through a corrupt scheme.



124. In the case of *Elijah Makeri Nyangwara v Stephen Mungai Njuguna & Another* 92013 eKLR Munyao J explained the import of section 26(1) (b) of the *Land Registration Act* as follows:

“First, it needs to be appreciated that for Section 26 (1) (b) to be operative, it is not necessary that the title holder be a party to the vitiating factors noted therein which are that the title was obtained illegally, unprocedurally or through a corrupt scheme. The heavy import of section 26 (1) (b) is to remove protection from an innocent purchaser or innocent title holder. It means that the title of an innocent person is impeachable so long as that title was obtained illegally, unprocedurally or through a corrupt scheme. The title holder need not have contributed to these vitiating factors. The purpose of section 26 (1) (b) in my view is to protect the real title holders from being deprived of their titles by subsequent transactions.”

125. Further in the case of *Dina Management (Supra)* the Supreme Court was categorical that:

“a registered proprietor acquires an absolute and indefeasible title if, and only if the allocation was legal, proper and regular. A court of law cannot on the basis of indefeasibility sanction an illegality or give its seal of approval to an illegal or irregularly obtained title.”

126. Consequently, it is my finding that as between the Plaintiff and the 1<sup>st</sup> Defendant, the Plaintiff is the lawful owner of land parcel number Eldoret Municipality Block 15/2323.

127. I will now proceed to determine whether the plaintiff is entitled to the reliefs sought in his Plaintiff. In his Amended Plaintiff the Plaintiff seeks a declaratory order that he is the lawful allottee of all that property known as Eldoret Municipality Block 15/2323 situated within Eldoret in Uasin Gishu County; an order that any lease and title documents held by the 1<sup>st</sup> defendant in respect of the suit property are illegal, null and void and stand revoked, an order directing the 2<sup>nd</sup> and 3<sup>rd</sup> defendants to register the lease in respect of the suit property in favour of the Plaintiff a permanent injunction restraining the Defendants from trespassing on or interfering with the plaintiff's peaceful possession of the suit property.

127. Having arrived at the finding that the Plaintiff is the lawful owner of the suit property, he is entitled to the reliefs sought. Conversely, the 1<sup>st</sup> Defendant's counterclaim fails and it is hereby dismissed.

128. The upshot is that the Plaintiff has proved his case on a balance of probabilities and I enter judgment for the Plaintiff and make the following final orders:

- a. A declaration is hereby issued that the Plaintiff is the lawful allottee of all that property known as Eldoret Municipality Block 15/2323 situated within Eldoret in Uasin Gishu County and is entitled to ownership, occupation and registration as the proprietor thereof.
- b. A mandatory order is hereby issued directing the County Land Registrar, Uasin Gishu (2<sup>nd</sup> Defendant) to register the lease in respect of the property known as Eldoret Municipality Block 15/2323 situated within Eldoret in Uasin Gishu County in favour of the Plaintiff and issue him with title documents within 30 days from the date of this judgment.
- c. A declaratory order is hereby issued that any lease and /or title documents held by the 1<sup>st</sup> Defendant in respect of the property known as Eldoret Municipality Block 15/2323 situated within Eldoret in Uasin Gishu County are illegal, null and void and the same are hereby cancelled.
- d. A permanent injunction is hereby issued prohibiting the defendants, their agents or servants from entering upon, trespassing, remaining upon, occupying or in any manner whatsoever



interfering with the Plaintiff's peaceful possession and occupation of the suit property known as Eldoret Municipality Block 15/2323 situated within Eldoret in Uasin Gishu County, failing which an eviction order shall issue without further application. The eviction order shall be enforced by the Officer Commanding Station, Yamumbi Police Station.

- e. In view of the circumstances of this case, each party shall bear their own costs.

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

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**J. M ONYANGO**

**JUDGE**

In the presence of:

1. Mr. Ndegwa for the Plaintiff
2. Mr Yego for the 1st Defendant
3. Mr Odongo for the 2nd and 3rd Defendants

Court Assistant: Hinga

