



REPUBLIC OF KENYA



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**Kahungu v Wanyonyi & 2 others (Environment & Land Case
4 of 2023) [2025] KEELC 4559 (KLR) (16 June 2025) (Judgment)**

Neutral citation: [2025] KEELC 4559 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT & LAND CASE 4 OF 2023**

**CK NZILI, J
JUNE 16, 2025**

BETWEEN

JOSEPH KAMAU KAHUNGU PLAINTIFF

AND

ISAIAH WANYONYI 1ST DEFENDANT

LAND REGISTRAR, TRANS-NZOIA COUNTY 2ND DEFENDANT

**LAND ADJUDICATION OFFICER TRANS-NZOIA COUNTY 3RD
DEFENDANT**

JUDGMENT

1. The plaintiff approached the court through a plaint dated 2/2/2023 seeking:
 - (a) Declaration that he owns Plot No. Zea Settlement Scheme No. 343 or L.R No. Trans Nzoia/ Zea/343, measuring 5 acres - herein after the suit land.
 - (b) The court to find the defendants are trespassers on it and should compensate him with general damages.
2. The plaintiff pleaded that the initial allottee of the suit land on 18/4/1997 was Samson Chumo, from whom he bought the land on 21/8/2014, and took vacant possession. The plaintiff averred that on 28/1/2023, he learned that someone had deposited building materials on the land, and upon making inquiries, he established that the 1st defendants was fraudulently and illegally reallocated the land by the 2nd and 3rd defendants.
3. The plaintiff termed the alleged acts of the defendants as undertaken without seeking his authority, consent, or approval, and to have been undertaken when the suit land was not available for reallocation, transfer, and registration, otherwise. That he was a beneficial owner, a bona fide purchaser and user of the suit land.



4. The 1st defendant opposed the suit through a statement of defense and counterclaim dated 4/5/2023. It was averred that the first allottee of the land failed to meet the terms and conditions of the offer letter, hence he had no ownership over the suit land, capable of being sold and transferred to the plaintiff. The 1st defendant averred that he was a duly registered as the owner of the suit land after he was issued with a title deed on 1/7/2022. The 1st defendant averred that after taking possession of the suit land, which was vacant at the time, he began developments thereon.
5. By way of a counterclaim, the 1st defendant averred that after obtaining a letter of allotment dated 7/5/2021 from the Settlement Fund Trustee (S.F.T), he paid all the requisite fees on 26/5/2021 and the land was duly transferred to him on 1/7/2022. The 1st defendant averred that the plaintiff only forcefully came into the land after taking over vacant possession and was preventing him from accessing or developing it without justification.
6. The 1st defendant counterclaimed for:
 - (a) Declaration that he is the legal owner of the land hence a permanent injunction be issued against the plaintiff from entering, dealing, leasing, carrying out any operation, or interfering with his title to the land.
 - (b) Eviction order from the title No. Trans Nzoia/Zea/343.
7. The 2nd and 3rd defendants opposed the suit through a statement of defense dated 29/3/2023. It was averred that after the initial allottee Samson Chumo, failed to meet the terms and conditions of the offer letter, the land was repossessed and reallocated to the 1st defendant, who paid the consideration in full through outright purchase. The 2nd and 3rd defendants termed the plaintiff's suit as frivolous, defective, misconceived, untenable, and raising no cause of action against them.
8. In reply to the 1st defendant's defense and defense to the counterclaim dated 16/5/2023, the plaintiff insisted that the initial allottee had met the terms and conditions of the offer letter by making payments of Kshs.47,490/= on 5/2/1998, hence he could sell, transfer and hand over vacant possession to him. The plaintiff averred that he had acquired absolute ownership of the land, pending the issuance of a title deed in his favor.
9. In the circumstances, the plaintiff averred that the 1st defendant acquired the land fraudulently or illegally, otherwise he has been in continuous and actual possession of the land since 2014 until 28/1/2023, when he justifiably resisted the forceful takeover of possession of it by the 1st defendant. The plaintiff termed the purported registration and issuance of the title deed to the 1st defendant on 7/5/2021 and 1/7/2022 as illegal, unprocedural, or made through a corrupt scheme, as the suit land was neither available for reallocation, nor was it vacant, given his occupation, use or possession from the initial allottee.
10. The plaintiff termed the counterclaim as disclosing no cause of action against him. In reply to the 2nd and 3rd defendants' defense, the plaintiff insisted that the initial allottee had met the terms and conditions of the allotment letter and hence, had a good title to pass to him.
11. At the trial, Joseph Kamau Kahungu testified as PW1. He relied on a witness statement dated 14/4/2023 as his evidence in chief. He told the court that the suit land was initially allocated to Samson Chumo on 18/4/1997, who made payments of Kshs.47,490/= on 5/2/1998, and in 2001, he allowed him to clear the bush to commence cultivation on the suit land, which was next to his other parcels numbers 340, 341 and 342 in Zea Settlement Scheme.



12. PW1 told the court that since 2001 he has been in actual possession of the land with express authority from the initial allottee, ploughing and cultivating the land during every rainy season, year after year without any interruption. PW1 told the court that on 21/8/2014, he was offered to purchase the land by the initial allottee for Kshs.2,250,000/=, which he readily paid and acquired its full ownership, while awaiting formal issuance of a title deed.
13. According to PW1, he continued utilizing the land until January 2022 when he learned of an attempted intrusion by some people, who had allegedly deposited building materials on the land. He termed the 1st defendant a trespasser out to infringe on his rights to ownership after irregularly or fraudulently obtaining a title to the suit land oblivious of his overriding interests. PW1 relied on a letter of offer dated 18/4/1997 and a payment receipt dated 5/2/1998, as P. Exhibit No. (1), MFI-P(2), copy of an agreement dated 21/8/2014 as P. Exhibit No. (3), copy of an area list letter from the chief as P. Exhibit No. (4) and a court order issued on 6/3/2023 as P. Exhibit No. (5).
14. In cross-examination, PW1 told the court that he bought the land before the seller had become the registered owner of the land by way of perfecting a charge, discharge of charge, or obtaining a title deed under his mane.
15. Similarly, PW1 admitted that the SFT was not involved in the sale, signing, or issuance of any approval or consent regarding the transaction. PW1 admitted that the letter of offer to the initial allottee was from the Agricultural Development Corporation though the payment receipt was issued by Lands Limited. Asked about the description of the suit land in the plaint, PW1 told the court that the title deed, plot number, ground report, and letter of offer referred to the same suit land.
16. PW1 acknowledged that he has no transfer letter, a letter between him and the seller, or any approval for the transaction from SFT. PW1 clarified that he had orally notified the lands officer in charge from SFT on the sale of the land to him by the initial allottee. PW1 said that he had also visited the Lands office and verified the ownership from the SFT before purchasing the suit land.
17. Samson Chumo testified as PW2. He relied on his witness statement dated 14/3/2023 as his evidence-in-chief. PW2 confirmed to the court that he was the initial allottee of the land before he sold it to the plaintiff. PW2 told the court that other than a letter of offer and payment receipts, he did not have either a charge, discharge of charge, or title documents before he sold the land on 21/7/2014 to the plaintiff.
18. In addition, PW2 told the court that he sold the land while under the ownership of the SFT, from whom unfortunately he did not seek their approval, authority, or consent to sell and transfer the suit land. Equally, PW2 confirmed that he had no transfer form duly signed by the plaintiff, himself, and the SFT over the sale and transfer. PW2 told the court that he was the one tiling the suit land up to 2014, otherwise before the sale, PW1 was his tenant with effect from 2001. PW2 denied that the letter of offer had a default clause.
19. As to the issuance of a title deed, PW2 said that after making payments of Kshs.47,490/=, he received no documentation of ownership from the SFT, who he believed was fully aware of the sale of the land in 2014 to the plaintiff. PW2 said that it was not his obligation to process the title documents after paying Kshs.47,490/=, to Lands Limited, Nairobi, and perhaps after selling the land in 2014.
20. Nelson Siror, Joseph Kiptoo, Livingstone Koskei, and Boniface Kijana Harun testified as PW3, PW4, PW5, and PW6. Relying on written witness statements dated 14/3/2023 as their evidence-in-chief, the witnesses confirmed that the plaintiff was their neighbor, who after purchasing the land from PW2 in 2014, has been utilizing the land with the full knowledge of the SFT.



21. Isaiah Wanyonyi testified as DW1. Relying on a witness statement dated 4/4/2024 as his evidence in chief, he told the court that he applied for and was allocated the suit land according to an allotment letter dated 7/5/2021. DW1 said that after he complied with the offer letter by clearing all the requisite fees, the suit land was discharged and transferred to him.
22. DW1 said that after he took vacant possession of the suit land in May 2021, he embarked on developing it, only for the plaintiff to invade it claiming a purchaser's interest from the first allottee, who unfortunately had never complied with the terms of the offer letter. DW1 produced a copy of his ID card, a title deed, allotment letter, payment receipts, discharge of charge, transfer form, and photographs as D. Exhibit Nos. 1-7 respectively. DW1 told the court that his title deed was obtained procedurally, lawfully, and regularly, and further that the land was vacant when he took possession of it.
23. DW1 told the court that he paid Kshs. 24,985/=, instead of Kshs.27,460/=. DW1 said that when he went to construct a house on the suit land in January 2023, a temporary order of injunction was served upon him.
24. Again, DW1 testified that though there was evidence of tilling, he never made inquiries on who it was before the land was allocated to him. Further, DW1 told the court that he was not aware of the prior allocation of the suit land to Samson Chumo.
25. At the close of the defence case parties filed written submissions. The plaintiff relies on written submissions dated 12/2/2025 isolating five issues for the court's determination. On whether the 3rd defendant acted illegally in reallocating the land. The plaintiff submitted that there was a conspiracy to defraud him of the land for the PW2 had met the terms of the offer letter by 5/2/1998 for Plot No. 206, now the suit land whose occupation by 2021 was by him. The plaintiff submitted that he was never notified of the intention to revoke or reallocate the land.
26. The plaintiff submitted that the *Fair Administrative Action Act* and Articles 40 and 50 of *the Constitution*, bind the 2nd and 3rd defendants in the discharge of their statutory mandate and in this case, since PW2 had fully complied with the offer letter in 1998 by making payments as required, the conduct of the 2nd and 3rd defendants in repossessing and reallocating the suit land to the 1st defendant was unjustified in law.
27. The plaintiff submitted that since the 2nd and 3rd defendants did not substantiate the contents of their defense under Sections 109 and 112 of the *Evidence Act*, by tendering evidence the defense should be struck out or disregarded. Reliance was placed on CMC Aviation Ltd -vs- Cruise Air Ltd [1976-80] 1 KLR 835, Robert Ngande Kathathi -vs- Francis Kivuva Kitonde [2020] eKLR, Edward Muriga through Stanley Muriga -vs- Nathaniel D. Schulter *CA No. 23 of 1997*, Karuru Munyororo -vs- Joseph Ndumia Murage & Another Nyeri HCC No. 95 of 1998 and North End Trading Co. Ltd -vs- City County of Nairobi [2019] eKLR.
28. The plaintiff submitted that PW2, after fully complying with the offer letter, had a legitimate expectation to be eventually issued with a title deed by the 2nd and 3rd defendants and in the alternative, to be compensated after he was deprived of the suit land. The plaintiff submitted that the 1st defendant knew that the land was not vacant and should therefore have followed due process in any reallocation. Reliance was placed on CCK & Others -vs- Royal Media Services [2014] eKLR on non-compliance with Article 47 of *the Constitution*, Halsbury's Laws of England 4th Edition Vol. 1(1) page 151 and, De Smith Woolf & Jowell "Judicial Review of Administrative Action 6th Edition Sweet & Maxwell page 609 on legitimate expectation.



29. The plaintiff submitted that since he has been on the land for 26 years, which had been lawfully initially allocated to PW2, it was no longer available for reallocation under Section 9(2)(c) of the [Land Act](#). Further, the plaintiff submitted that Article 21(1) of [the Constitution](#) mandated the 2nd and 3rd defendants to protect, respect, and observe his rights including the [Fair Administrative Action Act](#), which were negatively affected in the reallocation to the 1st defendant, without a fair hearing and perpetuating a fraud. Reliance was placed on *Alice Chemutai Too -vs- Nickson Kipkurui Korir & Others* [2015] eKLR and Black Laws Dictionary 9th Edition, Section 26(1)(b) of the [Land Registration Act](#), 2012, *Arithi Highway Developers Ltd -vs- west End Butchery Ltd & Others* [2015] eKLR.
30. On whether the registration of the land in the name of the 1st defendant was legal, the plaintiff submitted that the 1st defendant was not a bona fide or innocent owner of the land to acquire the protection of the law going by the principles set in *Katende -vs- Haridar & Co. Ltd* [2008] eKLR, *Elijah Makeri Nyangwara -vs- Stephen Mungai Njuguna & Another Eldoret ELC No. 609B of 2012*, *Diamond Trust Bank (K) Ltd -vs- Said Hamad Shamisi & Others* [2015] eKLR, *Samuel Kamere -vs- Land Registrar Kajiado CA Civil No. 28 of 2005*, and *Josephat Mulwa Mukima -vs- Jesse Nganga Gakobo & Others* [2020] eKLR.
31. It was the plaintiff's submission that the 1st defendant had not obtained a clean title to the land for he failed to undertake due diligence, inter alia from the neighbors, to establish who was on the land in the first instance and establish the history of the land, otherwise, he would have known that the initial allottee had fully complied in 1998 and passed the actual ownership of the suit land to him in 2014. Reliance was placed on *Evanson Wambugu Gachugi -vs- Simon Wamaina Gatwiki & Others* [2014] eKLR, *Kenya National Highway Authority -vs- Shalien Masood Mughal & Others* [2017] eKLR and *Isaac Gathungu Wanjohi & Another -vs- Attorney General & Others* [2012] eKLR.
32. On whether the defendants should be restrained from dealing with the land, the plaintiff submitted that the 1st defendant is a trespasser to the land as per Section 3(1) of the [Trespass Act](#) and as defined in *John Kiragu Kimani vs REA* [2018] eKLR and Black Laws Dictionary 10th Edition.
33. Accordingly, the plaintiff submitted that he deserves the reliefs sought for he has acquired prescriptive rights under Section 28(h) of the [Land Act](#), due to uninterrupted possession of the land for 26 years and also that under Article 40 of [the Constitution](#), which rights or interests he should not be deprived of the suit land by the actions of the 2nd and 3rd defendants who acted without compliance with Section 4 of the [Fair Administrative Action Act](#).
34. Lastly, the plaintiff submitted that the 2nd, 3rd, and 4th defendants failed to call evidence to substantiate their statement of defense contrary to Section 64 of the [Evidence Act](#), to show how PW2 breached the offer letter.
35. The 1st defendant relied on written submission dated 4/5/2025. He submitted that the plaintiff's suit is without merits since he has not discharged the legal burden of proof to establish a bona fide purchaser of the suit land under Sections 107 – 109 of the [Evidence Act](#). The plaintiff failed to prove compliance with the condition of the allotment letter and that neither him nor the initial allottee paid the requisite purchase price for the suit land. Reliance was placed on *Torino Enterprises Limited -vs- Attorney General (Petition 5 (E006) of 2022)* [2023] KESC 79, *Mitu-Bell Welfare Society -vs- Kenya Airports Authority & 2 others*[2021] KESC 34 (KLR) (11 January 2021) (Judgment), *Dr. Joseph N. K. Arap Ngok -vs- Justice Moijo Ole Keiwua & 4 Others Civil Appl. No.NAI 60 of 1997 (Unreported)*, *Mwero, Kadzoyo Chombo -vs- Ahmed Muhammed Osman & 11 others (Environment & Land Case 42 of 2021; [2021] KEELC 30 (KLR)*.



36. The 1st defendant further submitted that only registration would confer transferable title to the registered proprietor and not possession of an allotment letter. Similarly, that a party cannot purport to transfer a better title than he possess. Reliance was placed on Peter Wariire Kanyiri -vs- Chrispus Washumbe & 2 others [2022] eKLR and Le Pleidi Investment Limited v Director of Survey, Ruaraka Nairobi & 6 others; CECM Lands, Kilifi County & another (Interested Parties) (Environment & Land Case E76 of 2023) [2024] KEELC 3267 (KLR) (12 April 2024) (Ruling).
37. The 1st defendant also submitted that pleaded fraud and illegality which he did not substantiate with cogent evidence as held in Vijay Morjaria vs. Nasingh Madhusigh Darbar & Another [2000] eKLR). Equally, the 1st defendant he has completed all the necessary steps to acquire indefeasible title as per Sections 24-16 of the *Land Registration Act* and deserving of the reliefs in the counterclaim.
38. The court has carefully gone through the pleadings, evidence tendered written submissions and the law. The issues calling for my determination are:
- (1) If the plaintiff was a bona fide owner, user, and occupier of Plot No. 206 ADC Zea Settlement Scheme also known as title No. Trans Nzoia/Zea/343.
 - (2) If title No. Trans Nzoia/Zea/343 was lawfully allocated, transferred, and registered under the 1st defendant names by the 2nd and 3rd defendants.
 - (3) If there was any fraud, illegality, unprocedural, or corrupt scheme in reallocating, transferring, registration, and issuance of title No. Trans Nzoia/Zea/343 to the 1st defendant.
 - (4) If the plaintiff has pleaded and proved any illegality or fraud against the defendants.
 - (5) If the plaintiff is entitled to the reliefs sought.
 - (6) If the 1st defendant holds a valid title to Trans Nzoia/Zea/343 to be entitled to enjoy his ownership and possessory rights generally and particularly the reliefs sought in the counterclaim.
 - (7) What is the order of costs?
39. It is trite law that parties are bound by their pleadings and issues to the court's determination arise out of the pleadings.
40. A party is not therefore allowed in adversarial systems to travel outside the pleading. A court cannot determine matters not pleaded and proved through evidence. Written submissions cannot replace evidence or pleadings. See IEBC -vs- Stephen Mutinda Mule 2014 eKLR and Daniel Toroitich Arap Moi -vs- Mwangi Stephen Muriithi & Another[2014]eKLR. In this suit, the primary pleadings have been set out in this judgment. There was no pleading based on breach of legitimate expectation, breach of the constitutional and statutory rights of the initial allottee Samson Chumo by the defendants, and or the failure to refund and or compensate PW2 for breach of his fundamental rights and freedoms or statutory rights.
41. Equally, the plaintiff did not plead any authority to bring the suit for and on behalf of the initial allottee to the land. Similarly, the plaintiff did not plead that the 2nd and 3rd defendants are the ones who initially allocated land at ADC Zea Plot No. 206, which is also known as parcel number Trans Nzoia/Zea/343.
42. The description of the suitland was key in the plaintiff's suit. P. Exhibits (1), (2) and (3) refer to Plot No. 206 ADC Zea. P. Exhibit No. (4) refers to plot No. 206/343/Zea. Paragraph 7 of the plaint states that the plaintiff bought land known as Zea Settlement Scheme Plot No. 343 measuring 5 acres from PW2 on 21/8/2014.



43. Paragraphs 5 and 6 relate to an allotment letter and payments from Samson Chumo on 18/4/1997 and 5/2/1998 respectively. The plaintiff seeks four declaratory reliefs that he is the legitimate owner of the parcel known as Zea Settlement Scheme Plot No. 343 or Trans Nzoia/Zea/343 measuring 5 acres.
44. The plaintiff's case as pleaded and from the testimony was that he lawfully obtained ownership of the land from a bona fide allottee who had a better title to pass to him and indeed put him into vacant possession with effect from 2001 as a tenant and later in 2014 as a purchaser. The plaintiff testified that he had been in uninterrupted possession and occupation of the land until January 2023, when the 1st defendant moved in claiming to be the new owner.
45. The plaintiff terms the reallocation, transfer, and registration of the suit land now known as Title No. Trans Nzoia/Zea/343, as irregular, unprocedural, and unlawful. The plaintiff tendered evidence through PW1, 2, 3, 4, 5, and 6, that PW1 was a bona fide 1st allottee of the land and hence passed on good title to him.
46. In *Kuria Kiarie & Others -vs- Sammy Magesa* Civil Appeal 326 of 2017 [2018] KECA 467 [KLR], the court observed that allegations of misrepresentation, fraud, and illegalities must be strictly pleaded and proved under Order 2 Rule 4 of the Civil Procedure Rules. The court cited *Kinyanjui Kamau -vs- George Kamau* [2015] eKLR, that fraud as a serious allegation requires a higher standard of proof, than in ordinary suits and that it is not enough to simply infer fraud from the facts.
47. The burden of proof in this suit was therefore upon the plaintiff to prove that since the initial allottee had fully complied with the law on the allocation of plots in the settlement scheme before passing it to him, it was unlawful for the same land to be repossessed, allocated, transferred and registered in the 1st defendant's name by the 2nd and 3rd defendants.
48. In *Arithi High Developers Ltd -vs- West End Butchery Ltd* [2015] KEA 816 KLR, the court cited *Katende -vs- Harindar* (Supra) and *Lawrence Mukiri -vs- Attorney General & Others* [2013] eKLR, that a bona fide purchaser for value is a person who honestly purchases the property offered for sale, in good faith and from a vendor with a valid title. In this suit, the burden was on the plaintiff to prove that the initial allottee was holding a valid title.
49. The plaintiff urges the court to find that the 2nd and 3rd defendants' failure to tender evidence to substantiate the contents of the statement of defense is fatal by at the very least showing justification for their actions to repossess and reallocate the land when PW2 had fully complied with the offer letter.
50. In *Mbogo -vs- Settlement Land Trustees* (Civil Appeal 17 of 2019 [2025] KECA 561 [KLR] (28th March 2025) (Judgment), the court observed that the law is very protective of a title deed, unless acquired through misrepresentation, illegality, unprocedurally or through a corrupt scheme and that the import of Section 26(1) of the *Land Registration Act* is to remove protection from an innocent purchaser or innocent title holder. The court cited *Karugi & Another -vs- Kabiya & Others* [1983] KECA 38 [KLR], that even in an undefended suit, the burden of proof remains on the plaintiff to discharge in order to prove his case as to the truth or falsity of the same with credible evidence.
51. In *Weston Gitonga & Others -vs- Peter Ruga Gikanga & Another* [2017] KECA 24 [KLR], the court observed that there was no doubt that Plot No. 2114 legally existed in the Land Registry based on the clear documents and search records to certify the same, including a discharge issued to the deceased before the title deeds were registered.
52. The court observed that the claimant had proceeded against clear directions of the SFT, as the lawful authority for the allocation of plots, and on any alterations on the situation on the ground.



53. Guided by *Kimweli -vs- Kimweli* [2022] KECA (1394) KLR (16th December 2022) (Judgment), that whoever desires that the court to give judgment as to any legal right or liability is dependent on the existence of a fact that he asserts, the burden is on the plaintiff in this suit to prove the existence of the facts pleaded in his plaint.
54. In this case, there must be a paper trail from the allocating authority of the suit land confirming receipts of payments made by PW2 on time as per the letter of offer, followed by the identification of the land on the ground, and subsequently, an issuance of a discharge of charge for the particular Plot No. 206. The plaintiff relies solely on P. Exhibits No. 1, 2, and 3 and the evidence of PW1, 2, 3, 4, 5 and 6.
55. PW1, 2, 3, 4, 5, and 6 were not credible or reliable witnesses regarding the processes and procedures regarding allocation, ascertainment of the plot on the ground, the approval of the sale and transfer between the initial allottee and the plaintiff, and whether there was consent, approval, and confirmation of the existence of the plot from allocating authority as of 2014.
56. In *Kingara & Another -vs- Njonge & Others* Civil Appeal 77 of 2019 [2025] KECA 489 KLR (14th March 2024) (Judgment), the court observed that a plaintiff can only succeed on a preponderance of probabilities and if his version of events is true, accurate, acceptable and where the other version by the defendant is false, mistaken or ought to be rejected. The court observed that fraud must be clearly and specifically pleaded, providing details of the alleged fraudulent conduct, rather than in vague or ambiguous language.
57. The plaintiff relies on a letter of allotment issued to PW2 as proof of title or ownership before he bought and took possession of the land in 2014. In *Pankajkumar Henraj Shah & Another -vs- Abbas Lali Ahmed & Others* [2019] KECA 152 [KLR], the court noted that a green card and the evidence by the Land Registrar that the suitland was transferred to the 1st respondent by the SFT was authoritative in establishing prima face that the 1st respondent was allocated the suitland and became the registered owner. The court cited *Embakasi Properties Ltd -vs- Commissioner of Lands* [2019] eKLR, that a title deed is an end result.
58. It is trite that the defunct Settlement Fund Trustees was established under Section 167(2) of the repealed Agriculture Act with powers to both acquire and sell land through a mortgage installment repayment scheme. In *John Kamunya & Another -vs- John Nginyi Muchiri & Others* [2015] KECA 767 [KLR], the court observed that before one could access the benefits of land under the arrangement of the Agriculture Act, he had an obligation to off-set the loan, and that no contractual obligation could legally arise until an allottee had fulfilled his indebtedness to the SFT, causing the title to be transferred to him as an owner before he could exercise his free will as to its disposal, after acquiring a legally transferable interest in the suit land.
59. The plaintiff wants the court to place a premium on the sale agreement dated August 2014 between him and PW2. The plaintiff has not demonstrated how the 2nd and 3rd defendants were privy to the contract between him and the initial allottee, including their role in the allocation, repossession, and re-allocation process. The letter of offer and the payment receipts produced as exhibits were from Lands Ltd and not the 2nd and 3rd defendants. The nexus between the 2nd and 3rd defendants and the allocating authority to the suitland in 1997 and 1998 has not been pleaded and or established through evidence.
60. How the plaintiff wants the court to find the 2nd and 3rd defendants liable for the reallocation and issuance of title deed to the 1st defendant yet they were not party to or privy to the arrangements that the plaintiff had with the initial allottee and the Settlement Fund Trustees remains a mystery or unclear. Liability can only be attached to the 2nd and 3rd defendants out of acts of omission and commission



arising out of a contractual or breach of statutory obligations, attributable to the 2nd and 3rd defendants, their agents or employees.

61. The initial allottee testified before this court that he had no charge, discharge of charge, or title to the suit land or a letter from the allocating authority approving the sale of the land to the plaintiff as of 2014. Equally, the plaintiff has no single letter from the allocating authority recognizing him as a bona fide purchaser, user, or occupier of Parcel No. 206, now known as title No. Trans Nzoia/Zea/343 between 2014 and 2023 when it was registered in the name of the 1st defendant.
62. The 1st allottee and the plaintiff failed to produce any consent from the allocating authority authorizing the sale before the 1st defendant's title was processed. Similarly, the plaintiff produced no letter of confirmation from the allocating authority in 2014 indicating that the suit land was still available for sale and transfer by the initial allottee, after he had fulfilled the terms and conditions of the offer letter in 1998. See Joseph K. Cherono -vs- Kiplagat Kimitei [1995] KECA 137 KLR, Wamunga vs Njoroge (Civil Appeal 69 of 2018 [2023] KECA 1441 [KLR] (24th November 2023) (Judgment).
63. Allocation of plots in a settlement scheme involves the planning, mapping, demarcation, and the identification of settlers within a settlement scheme under the superintendence of a local land allocating committee according to the provisions of Sections 134 and 135 of the *Land Act*. Due diligence required the plaintiff to confirm the status of the land allocation process after the initial allottee had paid the sums in 1998 and its status as per the records of the allocating authority.
64. As of 2014, there is no indication if the plaintiff made an inquiry from the allocating authority and sought the inclusion of his name in the area list as the new owner in place of PW2, to be issued with a title deed. See Willy Kimutai Kitilit -vs- Michael Kibet [2018] KECA 573 [KLR]. The allocating authority was a key player in this suit but was not joined or called to testify to support the assertion that the initial allottee had fulfilled the terms of the offer letter and hence was in a position to sell and transfer his interest to the plaintiff in 2014. See Emanuel Ngade Nyoka -vs- Kitheka Mutisya Ngata [2017] KECA 353 [KLR].
65. The area chief's letter cannot in law be taken as conclusive evidence of who was the bona fide allottee, owner, and occupier of the land as of 2014. The plaintiff has also submitted that his occupation of the land for 26 years made him acquire prescriptive rights and hence, the title deed held by the 1st defendant is subject to. Though this fact was not pleaded, under Section 175 of the Agriculture Act (repealed) such an issue cannot be used to defeat the defense by the defendants. See Obadiah Manasseh Musera -vs- Jelita Makokha Mwechelesi & Another [2007] KECA 84[KLR].
66. Having established that the land did not lawfully belong to the initial allottee, in the face of the law, PW2 had no better title to pass or could not deal with the land in 2014 and also settled the plaintiff on it before regularizing his ownership of the land. See John K. Malembi -vs- Trufosa Cheredi Mudembei & Others [2019] KECA 126 [KLR]. I find that the plaintiff has not disclosed any cause of action on the part of the defendants. He therefore does not deserve the reliefs sought.
67. As to the counterclaim, the 1st defendant's title has not been impeached on account of fraud or illegality. Evidence to substantiate illegality or fraud has not been tendered at all. It is not enough to plead fraud or illegality without proving how the defendants were party to and committed any fraud or illegality against the plaintiff.
68. The plaintiff had no superior rights over the suit land and has not proved how the land was non-available for the allocation to the 1st defendant. The 1st defendant has a title deed specific to the suit land on the ground unlike the plaintiff who has no evidence to show that Plot No. 206 is also parcel known as No. Trans Nzoia/Zea/343. The court finds no justification for the 1st defendant not to enjoy



his rights of ownership under Article 40 of *the Constitution* and Order 40 of the Civil Procedure Rules.
The counterclaim is allowed with costs.

**JUDGMENT DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT
AT KITALE ON THIS 16TH DAY OF JUNE 2025.**

In the presence of:

Court Assistant - Dennis

Plaintiff present

Wanjiku for Mugo for the plaintiff present

Efedha for Teti for 1st defendant present

A.G. for 2nd and 3rd defendants absent

HON. C.K. NZILI

JUDGE, ELC KITALE.

