Karanca v County Government of Meru & 5 others; County Government of Meru (Plaintiff to the Counterclaim); Karanca (Defendant to the Counterclaim) (Environment and Land Case E008 of 2023) [2025] KEELC 6224 (KLR) (25 September 2025) (Judgment)

Neutral citation: [2025] KEELC 6224 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ENVIRONMENT AND LAND CASE E008 OF 2023

JO MBOYA, J

SEPTEMBER 25, 2025

BETWEEN

GEOFFREY KINJA KARANCA ..... PLAINTIFF

AND

THE COUNTY GOVERNMENT OF MERU ..... 1ST DEFENDANT

THE CHIEF LAND REGISTRAR ..... 2ND DEFENDANT

THE COUNTY LAND REGISTRAR, MERU ..... 3RD DEFENDANT

THE DIRECTOR OF SURVEYS ..... 4TH DEFENDANT

THE COUNTY DIRECTOR OF SURVEYS, MERY ..... 5TH DEFENDANT

THE NATIONAL HOUSING CORPORATION ..... 6TH DEFENDANT

AND

THE COUNTY GOVERNMENT OF MERU .... PLAINTIFF TO THE COUNTERCLAIM

AND

GEOFFREY KINJA KARANCA ..... DEFENDANT TO THE COUNTERCLAIM

JUDGMENT

1. The Plaintiff herein has approached the court vide Plaint dated 23rd October, 2023; and wherein the Plaintiff has sought various reliefs. The reliefs sought on behalf of the Plaintiff are as hereunder;

i. The Plaintiff was lawfully and legally allocated 0.1 ha parcel L.R Meru Municipality Block 1/376 by allotment letter dated 1st July 1997 for a lease issued of 99 years. He is therefore entitled to the 0.1 hectares by virtue of allotment from 1997.

ii. The 6th Defendant, the National Housing Corporation, was allocated parcel L.R No. Meru Municipality Block 1/357, measuring 0.9 ha and is only entitled to the 0.9 ha as per its letter of allotment. The reduction of 0.0556 ha from the plaintiff's land and an unlawful and illegal addition of the same to the 6th defendants land is unlawful, illegal and fraudulent.

iii. The area of the land as provided in the allotment process cannot be changed altered or reduced to the detriment of the allottee without notice, consent or legal justification. The plaintiff's land was illegally reduced to 0.309 ha in favour of the 6th defendant, contrary to the letter of allotment which indicates the parcel to be 0.9 ha. The 6th defendant has unjustifiably and illegally been added 0.0556 ha illegally, hived off from the plaintiffs' parcels No. Meru Municipality Block 1/376 and added to 6th defendant's parcel No. Meru Municipality Block 1/357.

iv. A declaration that both registers for the plaintiff's land and the 6th defendant's land have to be rectified to conform to their respective allotment letters and original part development plans (PDP) of 1997.

v. Consequently, an order of rectification do issue to rectify the relevant title deeds, registers and all lease documents, survey records, all plans, mutation maps to indicate the plaintiff's land to be 0.1 ha and the 6th defendant's land to be 0.9 ha to conform with each parcel, Letter of allotment and the original part development plan. Fresh new title documents be issued and beacons and boundary demarcations to be done.

vi. A Mandatory injunction do issue to compel the defendants, their servants, the agents, employees, servants and all people involved, whomsoever, to restore the plaintiff's vacant possession onto suit property for him to achieve his constitutional right to property under article 40 of *the Constitution* of Kenya. Further, that the defendants be compelled to restore the plaintiff's fence and remove all hindrances, barriers and security personnel to allow the plaintiff unfettered access, ingress and egress to this property.

vii. A declaration that pursuant to article 40 (1) (2) (3) of *the Constitution* the plaintiff's rights to property have violated and shall be compensated at the prevailing market rates for the value of the property at the date of judgment. Further, the plaintiff for reasons above pleaded is entitled to damages consequently.

viii. A permanent injunction do issue to restrain the defendants herein from interfering either by themselves or their agents, employees, servants and any other person whomsoever, whatsoever with the plaintiff's rights, interests and his quiet and peaceful enjoyment of the suit property.

ix. Punitive damages be awarded against the defendants due to the above reasons.

x. Exemplary damages be awarded for the reasons stated herein.

xi. Costs of the suit.

2. The 1st Defendant duly entered appearance and thereafter filed a statement of defence and counterclaim dated 8th April 2024. Vide the counterclaim under reference, the 1st defendant has sought the following reliefs:

a. A declaration that the defendant illegally acquired the certificate of lease of Meru municipality/ block 1/376 and the nullification/cancellation of the lease certificate.

b. The nullification/cancellation of surveying plan, registry index map, part development plan and registration transactions leading to registration of Meru Municipality/block 1/376.

c. A declaration that the county government of Meru is the rightful proprietor of Meru municipality block 1/376, formerly known as residential plot in Meru municipality.

d. In an alternative to the b & c above, a declaration that Meru Municipality/Bloc/1/376 is public land.

e. A permanent injunction restraining the defendant from entering, interfering, utilizing and or undertaking any act detrimental to public use in Meru Municipality/Block 1/376, formerly known as a residential plot in Meru Municipality.

f. Costs of the suit.

g. Any other relief that this honorable court shall deem proper to issue.

3. The 2nd, 3rd, 4th & 5th Defendants duly entered an appearance and filed a statement of defence. Moreover, the named defendants denied the claims by and on behalf of the Plaintiff.

4. The 6th Defendant similarly entered an appearance and filed a statement of defence. The statement of defence is dated 3rd May 2024 and wherein the 6th defendant has denied the claims on behalf of the Plaintiff. Furthermore, the 6th Defendant has contended that same was lawfully and duly allocated a portion of land situated within the municipality of Meru.

5. In addition, it has been contended that the property under reference is currently under development and in particular, the 6th respondent is undertaking the construction of the affordable houses.

6. The subject matter came up for directions on 13th March 2025 and whereupon the parties confirmed that same had filed and exchanged their respective list and bundle of documents. Furthermore, the parties also confirmed that the matter was ready for hearing.

7. The Plaintiff's case is premised on the evidence of three witnesses, namely; Geoffrey Kinja Karanja, Livingstone Kamande Gitau and Cyprian Kirera Irungu. Same testified as PW 1, PW 2 and PW 3 respectively.

8. It was the testimony of PW 1 that same is the Plaintiff in respect of the instant matter. Furthermore, the witness averred that by virtue of being the Plaintiff same is conversant with the facts of the case. In addition, the witness averred that same has since recorded and filed a witness statement dated 23rd October 2023; and which witness statement, the witness sought to adopt as is evidence in chief. To this end, the witness statement under reference was duly adopted and constituted as the evidence in chief of the witness.

9. The witness also referenced the list and bundle of documents dated 23rd October 2023 containing 18 documents. Thereafter, the witness sought to tender and produce the documents as exhibits before the court. However, an objection was taken to the production of document number 17 [surveyor's report]. On the other hand, the rest of the document[s] were conceded to and same were produced and admitted as exhibits P1 – P16; and P18, respectively.

10. Other than the foregoing, document no. 17 was marked for identification as PMFI – 17, subject to production by the surveyor. The witness referenced a further list and bundle of document dated

19th March 2025 containing six documents. Furthermore, the witness thereafter sought to tender and produce the documents as exhibits before the court. There being no objection, to the production of the document, same were duly produced and marked as Exhibit 19 [as a bundle].

11. Additionally, the witness referenced the Plaint dated 23rd October 2023; and the verifying affidavit annexed thereto. Besides, the witness sought to adopt and reiterate the contents of the Plaint.

12. On cross-examination, by learned counsel for the 1st defendant; the witness testified that same was offered the suit land in the year 1997. Furthermore, the witness averred that same was offered the land in question by the National Government.

13. While still under cross-examination, the witness testified that by the time the land was being offered into him, the land was vacant. Moreover, the witness testified that the land in question was allocated unto him by the commissioner of lands. In addition, the witness averred that same applied to be allocated the land through one, Honourable Mwiraria.

14. It was the further testimony of the witness that same was duly and lawfully allocated the suit property. In any event, the witness testified that the land in question did not belong to the municipal council of meru [now defunct]. On the contrary, the witness testified that the land in question belonged to the National Government.

15. The witness further testified that the letter of allotment which same has produced before the court does not reference any County Council. Moreover, the witness admitted that the letter of allotment does not reference any plan number. For good measure, the witness averred that no plan number is shown on the face of the letter of allotment.

16. On further cross-examination, the witness testified that same wrote a letter of acceptance. However, the witness conceded that the letter of acceptance was written after 15 years from the date when the letter of allotment was issued. In addition, the witness also testified that same paid the standard premium and the other statutory levies. To this end, the witness confirmed that the payments were duly received and receipted.

17. Additionally, it was the testimony of the witness that the ministry of land subsequently processed and issued him [witness] with a lease. Besides the witness testified that the lease was duly registered culminating into a certificate of lease.

18. It was the further testimony of the witness that the County Government of meru was not involved in the process attendant to the issue of the lease. Moreover, the witness testified that same was issued with a part development plan. In this regard, the witness averred that the referenced number of the part development plan is 167/97/9.

19. On cross-examination by learned counsel for the 2nd, 3rd, 4th & 5th defendants, the witness testified that the letter of allotment is dated 1st July 1997; whereas the part development plan is dated 4th July 1997. The witness acknowledged that the letter of allotment pre-dated the part development plan.

20. It was the further testimony of the witness that same accepted the letter of allotment. However, the witness admitted that the acceptance was made outside the statutory 30-day period. Furthermore, the witness testified that subsequently the Ministry of Lands processed and issued a lease and thereafter a certificate of lease.

21. While still under cross-examination by learned counsel for the named defendants, the witness testified that the acreage shown in the letter of allotment was 0.1 ha. However, the witness added that the acreage

under reference was subsequently reduced and thus there is a variance between the acreage shown in the letter of allotment and the certificate of lease.

22. On cross-examination by learned counsel for the 6th defendant, the witness averred that same did not write any application letter to be allocated the suit land. Furthermore, the witness testified that the land in question was allocated unto him through, one; Honourable Mwiraria. To this end, the witness referenced the letter of allotment dated 1st July 1997; and the part development plan dated 4th July 1997.

23. It was the further testimony of the witness that the part development plan which same has tendered and produced before the court was signed by the director of physical planning. The witness averred that the part development plan was signed in October 1998. Nevertheless, the witness admitted that the part development plan under reference does not have the approved plan number.

24. While still under cross examination, the witness testified that the letter of allotment which was issued to him had special conditions. The witness also averred that the letter of allotment also referenced the acreage of the land. In addition, the witness testified that the letter of allotment indicated that the land will be subject to survey.

25. It was the further testimony of the witness that same has sued the 6th defendant because the 6th defendant has fenced his land. In particular, the witness averred that the fence in question was erected by the County Government of Meru.

26. The 2nd witness who testified on behalf of the Plaintiff was Livingstone Kamande Gitau. Same testified as PW 2.

27. It was the testimony of the witness that same is a licensed surveyor. Furthermore, the witness averred that same was instructed and retained by the Plaintiff with a view to undertaking survey works on the suit property. To this end, the witness testified that same indeed undertook the exercise and thereafter prepared a report dated 8th August 2023. To this end, the witness sought to tender and produce the survey report under reference. There being no objection to the production of the report, same was produced and admitted as exhibit P 17.

28. On cross-examination by learned counsel for the 1st defendant; the witness testified that the land in question is situated within the municipality of meru. Moreover, the witness averred that same was shown the land in question by the Plaintiff. In addition, the witness averred that the land in question was allocated to the Plaintiff vide letter of allotment dated 1st July 1997.

29. It was the further testimony of the witness that by the time the land was being allocated to the Plaintiff same had not been surveyed. Nevertheless, the witness added that the land in question was subsequently surveyed in the year 2022.

30. On cross-examination by learned counsel for the 6th defendant, the witness testified that same procured and obtained data from the Directorate of Survey. In particular, the witness averred that same obtained a copy of survey plan, namely; F/R/510/2. Besides, the witness averred that same also obtained a copy of the letter of allotment and part development plan from the Plaintiff. Thereafter, the witness averred that same proceeded to undertake the survey exercise before preparing the report [exhibit P 17].

31. The 3rd witness, who testified on behalf of the Plaintiff, was Cyprian Kirera Irungu. Same testified as PW 3.

32. It was the testimony of the witness that same is a registered and practicing valuer. Furthermore, the witness testified that same is knowledgeable of and conversant with matters pertaining to valuation. The witness further testified that same was instructed and retained by the Plaintiff to undertake the

valuation exercise in respect of the suit property. To this end, the witness averred that same proceeded and undertook valuation. In addition, the witness averred that same thereafter prepared a valuation report dated 5th October 2023. For good measure, the witness ventured forward and produced the report as exhibit P 18.

33. On cross-examination by learned counsel for the 1st defendant, the witness averred that same visited the suit property on 4th October 2023. Furthermore, the witness testified that the date of visitation has been referenced in the valuation report. Nevertheless, the witness stated that the officials of the 1st defendant were not present during the valuation exercise.

34. Additionally, the witness testified that during the valuation exercise same found that the suit property had not been developed. In particular, the witness averred that there were no structures on the suit property.

35. On cross-examination by learned counsel for the 2nd, 3rd, 4th & 5th defendants, the witness testified that the valuation report relates to commercial premises. However, the witness conceded that the lease references a residential premises. Furthermore, the witness averred that in the course of the valuation exercise same used and relied on various documents including the deed plan, survey plan and the surveyor's report. Besides the witness also alluded to the valuation guidelines.

36. It was the further testimony of the witness that during the valuation exercise, same relied on the letter of allotment which indicated that the land in question is 0.1 ha. Furthermore, the witness testified that same valued the suit property before the court.

37. While still under cross-examination, the witness averred that the suit property is located in the neighborhood of various hotels including Meru Slopes, Alba and another hotel. However, the witness reiterated that the suit plot has not been developed.

38. On cross-examination by learned counsel for the 6th defendant; the witness testified that the suit property has changed the user/purpose at the foot of the allotment.

39. With the foregoing testimony, the Plaintiff's case was closed.

40. The 1st Defendant's case is premised on the evidence of one witness, namely; Akwalu Victor Mugambi. Same testified as DW 1.

41. It was the testimony of the witness that same is currently the Chief Officer for Lands, physical planning, housing and public works at the county government of Meru. Furthermore, the witness testified that by virtue of his portfolio, same is conversant with the facts of this case. In addition, the witness averred that same has since recorded and filed a witness statement dated 31st January 2025 and which witness statement the witness sought to adopt and rely on as his evidence in chief. To this end, the witness statement under reference was duly adopted and constituted as the evidence in chief of the witness.

42. Additionally, the witness referenced the list and bundle of documents dated 13th May 2024, containing 7 documents and thereafter sought to tender and produce same as exhibit. There being no objection, the documents under reference were tendered and admitted as exhibits D1 – D7 on behalf of the 1st defendant.

43. On the other hand, the witness referenced the statement of defence and the counterclaim dated 8th April 2024; as well as the verifying affidavit attached thereto. Thereafter the witness sought to adopt and reiterate the contents thereof and the reliefs sought thereunder.

44. On cross-examination by learned counsel for the 6th defendant, the witness testified that same is conversant with the location of the suit property. In addition, the witness testified that the suit property

is public land. In any event, it was the testimony of the witness that the suit property was not lawfully allocated to the Plaintiff.

45. While still under cross-examination, the witness testified that the letter of allotment in favour of Plaintiff was not properly issued. Moreover, the witness averred that the part development plan appears to have been issued long after the letter of allotment. To this end, the witness testified that the process of allotment was illegal and irregular. Besides, the witness also testified that the directorate of physical planning have also confirmed that the part development plan being relied upon by the Plaintiff is invalid.

46. On cross-examination by learned counsel for the Plaintiff; the witness testified that same has tendered and produced before the court a letter of allotment in favour of the 6th defendant. Furthermore, the witness averred that same has also tendered minutes of the municipal council of meru speaking to the allotment of the property to the 6th defendant.

47. While still under cross-examination, the witness testified that the property which is being claimed by the Plaintiff is referenced as Tuntu land. In particular, the witness testified that the land had been reserved.

48. Regarding the letter of allotment issued to the Plaintiff; the witness averred that the said letter of allotment shows that the Plaintiff's land measures 0.1 ha. However, the witness reiterated that the letter of allotment in favour of the plaintiff is illegal. Furthermore, the witness averred that the directorate of physical planning have since confirmed that the part development plan relied upon by the plaintiff does not form part of their record.

49. Upon being referred to the part development plan [PDP] the witness averred that same has a reference number. However, the witness added that same is not able to confirm the authenticity of the part development plan.

50. Regarding the certificate of lease in favour of the 6th defendant, the witness testified that same shows the acreage as 0.095 ha. Furthermore, the witness averred that the acreage in the certificate of lease differs from the acreage shown in the letter of allotment.

51. On being shown the part development plan, the witness averred that the part development plan is signed by the director of physical planning. In addition, the witness testified that the County Government of Meru was not party to the part development plan. In any event, the witness testified that the part development plan under reference has been disowned. As pertains to whether the county government was involved in the alienation of the land in favour of the Plaintiff, the witness testified that the county government was not involved. In any event, it was the testimony of the witness that the process relating to the alienation of the land started during the tenure of the local government.

52. Regarding exhibit P19, the witness testified that same are copies of the rate payment receipts. Furthermore, the witness added that rates are paid by landowners. Moreover, the witness averred that the receipts under reference show that the Plaintiff herein is the one who has been paying the rates.

53. It was the further testimony of the witness that the Plaintiff herein commenced to pay the rates on the basis of the certificate of lease. Nevertheless, the witness averred that the payments of rates was being made in error.

54. With the foregoing testimony, the first defendant's case was closed.

55. The 2nd, 3rd, 4th & 5th Defendants did not file any witness statement. Moreover, the named defendants also did not file any list and bundle of documents. Suffice it to state that the case for the 2nd, 3rd, 4th & 5th defendants was closed without any evidence being tendered/adduced.

56. The 6th Defendant's case is premised on the evidence of one witness, namely; Joshua Odege Sanduk. Same testified as DW 2.

57. It was the testimony of the witness that same is a licensed surveyor by profession. Furthermore, the witness testified that same is currently the acting manager the land surveying and physical planning department of the 6th defendant. To this end, the witness averred that same is conversant with the facts of this matter. In addition, it was the testimony of the witness that same has since filed a witness statement dated 3rd May 2024 and which the witness sought to adopt and constitute as his evidence in chief. In this respect, the witness statement was duly adopted and constituted as the evidence in chief of the witness.

58. The witness also referenced the list and bundle of documents dated 3rd May 2024 containing 25 documents and which the witness sought to tender and produced before the court. There being no objection to the production of the document, same was produced and marked as exhibit D1 – D25, respectively on behalf of the 6th defendant.

59. On cross-examination by learned counsel for the 1st defendant, the witness testified that the 6th defendant was duly and lawfully issued with a letter of allotment. In addition, the witness averred that the letter of allotment was issued by the commissioner of lands [now defunct] albeit with the approval of the municipal counsel of Meru. In addition, the witness averred that the land which was being allocated is currently captured at the foot of a certificate of lease.

60. On cross-examination by learned counsel or the 2nd, 3rd, 4th & 5th defendants, the witness testified that same has filed and referenced various documents before the court. In particular, the witness averred that same has produced a copy of the part development plan that was issued to the 6th Defendant. Moreover, the witness averred that the 6th Defendant was also issued with a letter of allotment by the commissioner of lands.

61. While still under cross-examination, the witness testified that the 6th defendant subsequently paid the standard premium to the commissioner of land and thereafter the 6th defendant was issued with a lease and a certificate of lease. In this regard, the witness averred that the land lawfully belongs to the 6th defendant.

62. On cross-examination by learned counsel for the Plaintiff, the witness testified that the suit property was allocated to the Plaintiff. However, it was the testimony of the witness that the process of allotment in favour of the Plaintiff was not lawful. In any event, the witness testified that the Plaintiff has not developed the suit.

63. While still under cross-examination, the witness averred that same has since seen a copy of the letter of acceptance that was issued by the Plaintiff. However, the witness clarified that the letter of acceptance was issued in the year 2022.

64. Regarding the letter of allotment, in favour of the 6th defendant, the witness averred that same was issued in the year 2011. Nevertheless, the witness stated that the 6th defendant thereafter paid the standard premium and all the statutory levies. Nevertheless, it was conceded that the payment of the standard premium was made outside the 30-day statutory period.

65. As concerns the validity of the 6th defendant's letter of allotment, the witness averred that same is lawful and valid. Nevertheless, the witness admitted that both the letters of allotment in favour of the Plaintiff and in favour of the 6th defendant were issued by the commissioner of lands [now defunct].

66. Regarding the acreage at the foot of the 6th defendant's letter of allotment, the witness testified that the acreage is shown as 0.095 ha. On the other hand, the witness admitted that the acreage at the foot of the letter of allotment is at variance with the acreage shown at the foot of the certificate of lease.

67. Upon being referred to the part development plan [PDP] produced before the court, the witness averred that the said part development plan was prepared by the district physical planner.

68. However, the witness added that the final approval was to be given by the Minister of Land. Moreover, the witness confirmed that the part development plan was duly approved.

69. While still under cross-examination, the witness testified that where there is a difference between the acreage in the letter of allotment and the certificate of lease, then there would be an error. In particular, the witness testified that such difference would denote an error.

70. It was the further testimony of the witness that the 6th defendant is currently implementing the affordable housing on the land that was allocated to the 6th defendant. In this regard, the witness confirmed that the property in question is currently under development.

71. On further cross examination, the witness testified that the 6th defendant has never laid any claim to the Plaintiff's land. In any event the witness averred that the 6th defendant land shares a common boundary with the Plaintiff's land/suit property.

72. On re-examination, the witness [DW2] averred that same reiterates and maintains the contents of the witness statement filed on behalf of the 6th defendant. Furthermore, the witness testified that the 6th defendant's land shares a common boundary with the suit property.

73. While still on re-examination, the witness testified that the letter of allotment which was issued in favour of the 6th defendant was in respect of unsurvey land.

74. Nevertheless, the witness added that the land in question was thereafter surveyed. In addition, the witness averred that the acreage was ascertained and confirmed upon survey. Besides, the witness testified that the survey was undertaken in the year 2009.

75. Regarding the document at page 36 of the 6th defendant's list and bundle of documents, the witness testified that same is a payment voucher. Moreover, the witness averred that same has also availed a copy of the banker's cheque which was used by the 6th defendant to pay the standard premium on behalf of the 6th defendant.

76. Additionally, it was the testimony of the witness that the 6th defendant was issued with a certificate of lease in respect of the property. Furthermore, the witness averred that the said certificate of title bearing the name of the 6th defendant is valid and lawful.

77. With the foregoing testimony, the 6th Defendant's case was closed.

78. Upon the close of the hearing, the advocates for the parties sought time to file and exchange written submissions. To this end, the court proceeded to and circumscribed the timelines for the filing and exchange of the written submissions.

79. The Plaintiff filed written submissions dated 4th July 2025; and wherein same has raised and canvassed three [3] key issues. The issues highlighted by the Plaintiff are, namely: whether the Plaintiff has proved

his case on a balance of probability; whether the 1st defendant's counterclaim has merit[s] or otherwise; and what reliefs ought to be granted in the circumstances of the matter beforehand.

80. The 1st Defendant filed written submissions dated 21st July 2025; and wherein same has isolated and thereafter canvassed three [3] key issues, namely; whether the Plaintiff acquired a good title over Meru/ Block 1/376; whether the 1st defendant has proved the particulars of illegalities and proprieties and irregularities in the acquisition of the suit property by the Plaintiff; and whether the 1st defendant is entitled to the relief sought vide the counter claim.

81. The 2nd, 3rd 4th and 5th Defendants [through the Honorable Attorney General] filed written submissions dated 15th July, 2025 and wherein same has highlighted one key issue, namely: whether the certificate of lease held by the Plaintiff was lawfully acquired or otherwise.

82. The 6th Defendant filed written submissions dated 30th July 2025 and wherein same has highlighted three [3] key issues. The issues highlighted by the 6th defendant are, namely; whether the Plaintiff has proved that NHC [6th defendant] hived off 0.0556Ha. from the suit property; whether the 6th defendant has prevented the Plaintiff from accessing the suit property or otherwise; and whether the Plaintiff has proved his claims to the suit property and thus entitled to the reliefs sought.

83. Having reviewed the pleadings filed by the parties; the evidence tendered [both oral and documentary] and upon consideration of the written submissions filed on behalf of the various parties, I come to the conclusion that the determination of the subject matter turns on four [4] key issues, namely; whether the Plaintiff acquired lawful rights to and in respect of the suit property or otherwise; whether the suit property is public land belonging to the County Government of Meru or otherwise; whether the 6th defendant has trespassed on to the Plaintiff's property or otherwise; and what reliefs [if at all] ought to be granted.

84. Regarding the first issue, it is imperative to recall and reiterate that the Plaintiff approached this court contending that what now constitute the suit property was lawfully allocated unto him [plaintiff] vide letter of allotment dated 1st July 1997. Furthermore, the Plaintiff averred that same was also issued with a part development plan [PDP] designating the location of the property that was sought to be allocated.

85. Additionally, it was the testimony of the Plaintiff that following the allotment of what is now the suit property unto him, same [plaintiff] proceeded to and issued a letter of acceptance denoting acceptance of the terms of the letter of allotment. Moreover, the Plaintiff also contended that same also paid the standard premium and the statutory levies that were highlighted in the body of the letter of allotment dated 1st July 1997.

86. It was the Plaintiff's further testimony that subsequently, the Ministry of Land processed, prepared and issued the lease instrument in respect of the suit property. In addition, it was posited that the lease instrument was ultimately executed and thereafter presented for registration, culminating into the issuance of the certificate of lease dated 20th April 2023.

87. Be that as it may, the Plaintiff contended that even though the ministry of lands processed, executed, engrossed and thereafter escalated the lease instrument for registration, the acreage of the suit property was reduced to 0.0309 Ha. The plaintiff posited that the Hectarage reflected at the foot of the certificate of lease does not correspond with the hectarage at the foot of the letter of allotment issued on the 1st July 1997.

88. The foregoing constitutes the crux of the Plaintiff's case. Furthermore, it is not lost on me that the plaintiff tendered documentation before the court to underpin [sic] his entitlement to the suit property and to vindicate the claims at the foot of the Plaint dated 23rd October 2023.

89. In an endeavor to discern and or interrogate whether the Plaintiff acquired and or accrued lawful title to the suit property, this court is called upon to review the entire process starting with the letter of allotment dated 1st July 1997. This constitutes and endeavour to discern the root of the Plaintiff's Title and the veracity thereof. For good measure, there is no gainsaying that the letter of allotment constitutes the starting point [the gateway] in ascertaining the legality of the consequential processes.

90. The letter of allotment which was tendered and produced before the court by the Plaintiff is dated 1st July 1997. However, the part development plan that was relied upon by the plaintiff is dated 5th October 1998 and thereafter approved on 26th November 1998. It is instructive to observe that the letter of allotment being relied upon was issued long before the part development plan [PDP] was prepared, signed and approved [if at all]. Simply put, the letter of allotment predated the Part development plan.

91. The question that does arise is whether a letter of allotment can issue and be executed long before the part development plan has been prepared. Notably, a part development plan is a precursor to the issuance of a letter of allotment. It is the part development plan that authenticates and or confirms the availability or otherwise of the plot sought to be allocated.

92. The importance of a part development plan in the process of allocation of what was hitherto government land under the government *land act*, chapter 280 laws of Kenya [now repealed] is highlighted vide the provisions of sections 3 of the physical planning act chapter 296 laws of Kenya [now repealed].

93. The provisions of section 3 of the Physical Planning Act [supra] stipulate thus:-

> 3. In this Act, unless the context otherwise requires—
>
> .....
>
> (d) a part development plan indicating precise sites for immediate implementation of specific projects or for alienation purposes;

94. Furthermore, the procedure relative to the preparation; execution and approval of a part development plan; and more particularly its place in the process of alienation of what was hitherto government land was expounded by the Supreme Court of Kenya [the apex Court] in the case of Dina Management Ltd v County Government of Mombasa & 5 others (Petition 8 (E010) of 2021) [2023] KESC 30 (KLR) (Constitutional and Human Rights) (21 April 2023) (Judgment).

95. For coherence the apex court stated thus:

> 104. The procedure for the allocation of unalienated land is laid out by the Environment and Land Court in Nelson Kazungu Chai & 9 others v Pwani University [2014] eKLR as follows:"...It is trite law that under the repealed Government Lands Act, a Part Development Plan must be drawn and approved by the Commissioner of Lands or the Minister for lands before any un-alienated Government land could be allocated. After a Part Development Plan (PDP) has been drawn, a letter of allotment based on the approved PDP is then issued to the allotees.
>
> 131. It is only after the issuance of the letter of allotment, and the compliance of the terms therein, that a cadastral survey can be conducted for the purpose of issuance of a certificate of lease. This procedural requirement was confirmed by the surveyor, PW3. The process was also reinstated in the case of African

Line Transport Co Ltd v Attorney General, Mombasa HCCC No 276 of 2013 where Njagi J held as follows: "Secondly, all the defence witnesses were unanimous that in the normal course of events, planning comes first, then surveying follows. A letter of allotment is invariably accompanied by a PDP with a definite number. These are then taken to the department of survey, who undertake the surveying. Once the surveying is complete, it is then referred to the Director of Surveys for authentication and approval. Thereafter, a land reference number is issued in respect of the plot 132. A part development plan (PDP) can only be prepared in respect to Government land that has not been alienated or surveyed..."

105. This process is restated in African Line Transport Co Ltd v Attorney General, Mombasa, HCCC No 276 of 2003 [2007] eKLR where it was held that planning comes first, then surveying. A letter of allotment is invariably accompanied by a PDP with a definite number, which would then be taken to the Department of Survey for surveying. Thereafter, it is then referred to the Director of Surveys for authentication and approval. It is after that process that a land reference number is issued in respect of the plot.

96. There is no gainsaying that a part development plan was and remains a critical process in the alienation of public land. Instructively, it is the part development plan which confirms and ascertains the availability of the designated land for a particular purpose or use.

97. Back to the letter of allotment. Other than the fact that the letter of allotment pre-dated the part development plan, it is also worthy to highlight that the letter of allotment contained special terms and conditions including the requirement that same be accepted within thirty [30] days of the post mark. Furthermore, the letter of allotment also underscored the necessity to pay the standard premium and other statutory levies within the same timelines. Furthermore, the letter of allotment also adverted to a clause that in the event of default by the allotee to comply with the terms, the letter would be deemed to have lapsed.

98. Having been issued with the letter of allotment dated 1st July 1997, there is no gainsaying that the plaintiff herein was called upon and or obligated to generate the letter of acceptance and pay the standard premium within the prescribed thirty days. However, the plaintiff herein conceded and acknowledged that same generated the letter of acceptance and made the payments after twenty-two years. In particular, the letter of acceptance was dated and [sic[received on 15th July 2022.

99. The question that comes to the fore is whether the letter of allotment dated 1st July 1997; remained alive and was thus capable of being [sic] accepted on 15th July 2022?

100. I am afraid that the letter of allotment [which constitutes an offer to the allotee] was time-bound. The moment the plaintiff failed to comply with and or abide by the terms thereof, the impugned letter of allotment lapsed by effluxion of time and stood extinguished. Thereafter, no amount of action and or payments of whatever monies would restore; revive; or resuscitate the extinguished letter of allotment. It became dead. Moreover, it ceased to exist in the eye[s] of the Law.

101. The Supreme Court in the case of Torino Enterprises Limited v Attorney General (Petition 5 (E006) of 2022) [2023] KESC 79 (KLR) (22 September 2023) (Judgment) elaborated on the legal consequences and or implications attendant to a letter of allotment whose terms are not complied with.

102. For coherence, the apex court stated thus:-

> 58. So, can an allotment letter pass good title? It is settled law that an allotment letter is incapable of conferring interest in land, being nothing more than an offer, awaiting the fulfilment of conditions stipulated therein. In Dr Joseph NK Arap Ng'ok v Justice Moijo Ole Keiyua & 4 others CA 60/1997 [unreported]; and in Gladys Wanjiru Ngacha v Teresa Chepsaat & 4 others HC Civil Case No 182 of 1992; [2008] eKLR, the superior courts restated this principle as follows: "It has been held severally that a letter of allotment per se is nothing but an invitation to treat. It does not constitute a contract between the offerer and the offeree and does not confer an interest in land at all" [Emphasis added].
>
> 59. The pronouncement in Gladys Wanjiru and Dr Joseph NK Arap Ng'ok (supra) has been echoed in various Environment and Land Court decisions post the 2010 Constitution, including; Lilian Wanjeri Njatha v Sabina Wanjiru Kuguru & another, Environment and Land Case No 471 of 2010; [2022] eKLR; John Elias Kirimi v Martin Maina Nderitu & 4 others, Environment and Land Suit No 320 of 2011; [2021] eKLR; and Kadzoyo Chombo Mwero v Ahmed Muhammed Osman & 11 others, Environment and Land Case No 42 of 2021; [2021] eKLR, to mention but a few.
>
> 60. Suffice it to say that an Allottee, in whose name the allotment letter is issued, must perfect the same by fulfilling the conditions therein. These conditions include but are not limited to, the payment of a stand premium and ground rent within prescribed timelines. But even after the perfection of an allotment letter through the fulfillment of the conditions stipulated therein, an allottee cannot pass valid title to a third party unless and until he acquires title to the land through registration under the applicable law. It is the act of registration that confers a transferable title to the registered proprietor, and not the possession of an allotment letter. In Peter Wariire Kanyiri v Chrispus Washumbe & 2 others, Environment and Land Court Case No 603 of 2017; [2022] eKLR, Kemei, J held as follows:
>
> > "[15]. In the case at hand, in the absence of any title registered in the name of the plaintiff, the court is unable to hold that the plaintiff is the registered proprietor of the land. This is because the letter of allotment lapsed within 30 days and the same is of no legal consequences" [Emphasis added].
>
> 61. While we agree with the general tenor of the learned Judge's foregoing pronouncement, we remain uncomfortable with his inference that the allotment letter was of no legal consequence solely because it had lapsed after 30 days. We must reiterate the fact that an allotment letter in and by itself, is incapable of conferring a transferable title to an allottee. Put differently, the holder of an allotment letter is incapable of transferring or passing valid title to a third party on the basis of the allotment letter unless and until he becomes the registered proprietor of the land consequent upon the perfection of the Allotment Letter. It matters not therefore that the allotment letter has not lapsed.

62. Back to the facts of this case, the allotment letter issued to Renton Company Limited was subject to payment of stand premium of Kshs.2,400,000.00, annual rent of Kshs.480,000.00 amongst others. Moreover, the letter was granted on condition that Renton Company Limited would accept it within thirty (30) days from the date of the offer, failure to which it would be considered to have lapsed.

103. The foregoing position was also reiterated by the Court of Appeal in the case of Waterfront Holdings Limited v Kandie & 2 others (Civil Appeal 88 of 2019) [2023] KECA 1223 (KLR) (6 October 2023) (Judgment) where the court stated and held thus;

> " 56. We must, however, point out, based on the case of M'Ikiara M'Rinkanya and Another v Gilbert Kabeere M'Mbijiwe [1982 – 1988] 1 KAR 196, that where the allotment lapses due to the failure by the allottee to meet the conditions in the letter of allotment, the subsequent re-allotment, to be properly valid, must follow the prescribed process of allotment of land and the failure to do so would lead to the resulting title being cancelled as well."
>
> 57 In the matter before us, the 1st Respondent failed to discharge the burden of proving that Lemiso, from whom he claimed his title, met the conditions in the letter of allotment and that by the time the process of re-allotment to the Appellant commenced, he had done so. Accordingly, the re-allotment of and issuance of title of the subject property to the Appellant cannot be faulted and the subsequent issuance of the Certificate of Lease to Lemiso was inconsequential. That title was not based on any letter of allotment, a prerequisite for allotment of un-alienated government land. It follows that the 1st Respondent could not acquire a valid title from Lemiso.

104. The Plaintiff herein may want to contend that the letter of acceptance which was issued on 15th July 2022 and the payments made thereunder were duly accepted, and that the acceptance thereof revived and or reinstated the terms of the letter of allotment. However, it is common ground that ones the letter of allotment lapses, no amount of ex post facto activities can revive the dead letter of allotment.

105. Furthermore, there is no gainsaying that the acceptance of sic the payment after lapse of time does not constitute acquiescence by the Government; or operate as estoppel as against the government.

106. In the case of Joseph Kamau Muhoro v Attorney General & another [2021] eKLR, this court considered a similar position and held as hereunder:-

> 33. In my humble view, by the time the Plaintiff/Applicant herein, was purporting to pay the stand premium and the annual rent, which were mandatory conditions to the letter of Allotment, the allotment in question was already extinguished and was thus incapable of attracting any payment and/or being activated whatsoever.
>
> 34. Besides, I also hold the humble opinion that having not formally accepted the Letter of Allotment, [in writing as required], the Letter of Allotment, on which the Plaintiff/Applicant has premised his claim, was rendered void and non-existent.

35. In support of the foregoing holdings, it is important to take cognizance of the Decision in the case of Dr. Syedna Mohammed Burhannuddin Saheb & 2 others vs Benja Properties & 2 others [2007] eKLR;

> "In any event, the letter of allotment relied upon by the Defendant had itself expired, and was therefore invalid. I do not accept Mr. Kirundi, Counsel for Defendant's argument, that the expired letter, when acted upon, had been "revived' through conduct. The letter had expired. It was dead. There was nothing to "revive".

107. For good measure, I still hold and reiterate the same position.

108. I now wish to address the issue as to whether what constitutes the suit land could be alienated and allocated by the commissioner of land [now defunct] without the recommendation and or approval of the municipal council of Meru?

109. To start with, it is common ground that the suit property fell within the Municipal council of Meru at the point in time when same was purported to be allocated to the Plaintiff herein. It is because the said property fell within the authority and or auspices of the municipal council of Meru that the plaintiff herein kept paying rates to the said authority.

110. To my mind, what constitute the suit property was hitherto part of the trust land which could only be allocated or alienated by the commissioner of lands [now defunct] with the concurrence/approval of the municipal council of Meru [now defunct]. However, it is common ground and the plaintiff confirmed as much, that the Municipal council of Meru was not involved in the process of the allocation/ alienation of the suit property. To this end, there is no gainsaying that the impugned process culminating into the allocation of the suit property in favor of the Plaintiff was irregular, lawful and thus illegal.

111. The procedure underpinning the allocation and or alienation of immovable properties that previously fell within the municipalities [Municipal Council] was highlighted by the Court of Appeal in the case of Ethics and Anti-Corruption Commission v. Eunice N. Mugalia & Sammy Silas Komen Mwaita, Kisumu Court of Appeal, Civil Appeal No. 39 of 2019,[Unreported].

> " 32. The first respondent was purportedly allocated government land under the Government Lands Act and was to be issued with a certificate of lease in the form of a grant under the Registration of Titles Act. How a government grant that was issued and accepted by the 1st respondent under the Government Lands Act, pursuant to which the government was to be the lessor, changed to be the lease under the Registered *Land Act* under which the municipal council of Kakamega became the lessee is a mystery.
>
> As we have already stated, the government *land act* vested in the president and the commissioner of lands power to alienate government land as long as the procedure laid out in the act was followed. Trust *land act* on the other hand vested in the county council the power to alienate the land in their respective counties and the commissioner of lands had no power to alienate the same save as directed by the county council through a resolution. In the circumstances, we do not see how the letter of allotment dated 31st July 1998 under which the commissioner of lands offered to the 1st respondent a grant of the government land could have given rise to the lease dated 2nd June 2000 of trust land that was

> vested in the municipal council of Kakamega. So under what regime of the law was the commissioner of lands acting when he alienated the suit property? We ask this question because the two legal regimes, that is the government lands act and the trust *land act* have different processes as regards to alienation of land". [Underlining Supplied].

112. Yet again, I come to the conclusion that the process attendant to the allotment of what now constitutes the suit property did not accord with and or adhere to the relevant legal regime which regulated allotment/ alienation of what was hereto trust land.

113. At any rate, even though the plaintiff herein has contended that the suit property never belonged to the Municipal council of Meru, the contention by the plaintiff is based on a misapprehension of the legal regime that was obtaining as at the time of [sic] the issuance of the impugned letter of allotment. Moreover, it is common ground that there was National Government in 1997; and hence same could not allocate Land to [sic] the Plaintiff. Notably, the term National Government was birthed upon the promulgation of *the Constitution*, 2010.

114. Additionally, it is important to reiterate that at the point in time when the impugned letter of allotment was being issued, there was no National Government. In this regard, the position by plaintiff that the suit property belonged to the Nation Government falls by the wayside. Instructively National Government and County Government were birthed by *the Constitution* 2010 which was promulgated on the 27th August 2010.

115. Turning to whether the certificate of lease held by the plaintiff was procured procedurally and or lawfully, it is worthy to recall that the certificate of lease/ certificate of title is an end product. Being an end product, the certificate of lease/ certificate of title derives its validity and legality from the transactional documents that underpins its roots.

116. In respect of the instant matter, I have found and held that the certificate of title was generated and issued long after the letter of allotment had lapsed; stood extinguished; and ceased to exist. In this regard, the question that begs the answer is how and on what basis was the certificate of lease issued?

117. Sadly, I come to the conclusion that the certificate of lease that is being relied upon by the Plaintiff was procured without due regard to the law. Same was obtained in vacuum.

118. In the case of Chemey Investment Limited v Attorney General & 2 others [2018] KECA 863 (KLR), the Court of Appeal considered a similar situation where a certificate of title had been illegally procured; and the court stated as hereunder.

> " Decisions abound where courts in this land have consistently declined to recognise and protect title to land, which has been obtained illegally or fraudulently, merely because a person is entered in the register as proprietor. See for example Niaz Mohamed Jan Mohamed v. Commissioner for Lands & 4 Others [1996] eKLR; Funzi Island Development Ltd & 2 Others v. County Council of Kwale (supra); Republic v. Minister for Transport & Communications & 5 Others ex parte Waa Ship Garbage Collectors & 15 OthersKLR (E&L) 1, 563; John Peter Mureithi & 2 Others v. Attorney General & 4 Others [2006] eKLR; Kenya National Highway Authority v. Shalien Masood Mughal & 5 Others (2017) eKLR; Arthi Highway Developers Limited v. West End Butchery Limited & 6 Others [2015] eKLR: Munyu Maina v Hiram Gathiha Maina [2013] eKLR and Milan Kumarn Shah & Others v. City Council of Nairobi & Others, HCCC No. 1024 of 2005. The effect

> of all those decisions is that sanctity of title was never intended or understood to be a vehicle for fraud and illegalities or an avenue for unjust enrichment at public expense."

119. Finally, it is worthy to outline that the mere fact that the Plaintiff herein holds a certificate of title does not by and of itself, bestow upon the Plaintiff the sanctity and or indefeasibility of title. For good measure, the sanctity and indefeasibility of title only spring[s] to the fore once its proven/ established that the impugned certificate of title was legally and validly acquired. [See Article 40(6) of *the Constitution*].

120. Additionally, it is apposite to take cognizance of the holding in the case of Funzi Development Ltd & others v County Council of Kwale, Mombasa Civil Appeal No 252 of 2005 [2014] eKLR where the court of appeal stated thus:-

> ...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 of title sanction an illegality or gives its seal of approval to an illegal or irregularly obtained title."

121. Flowing from the analysis contained in the preceding paragraphs, I am afraid that the plaintiff herein has neither established not proven that same was lawfully and legally allocated the suit property. Furthermore, the plaintiff has failed to establish that the certificate of lease held by same deserves the constitutional and statutory protection in terms of article 40 (3) of *the Constitution*.

122. My answer to issue number one is fourfold. Firstly, the process of alienation/allocation of what now constitutes the suit property did not comply with the provisions of section 3 of the Physical Planning Act, Chapter 296 Laws of Kenya [now repealed] which was the law that regulated the preparation, execution and approval of part development plans at the time of the purported alienation of the suit property.

123. Secondly, the letter of allotment dated and issued, 1st July 1997, lapsed; stood extinguished; and ceased to exist upon the failure by the Plaintiff to comply with and or abide by the terms thereof. Same was therefore rendered non-existent and void.

124. Thirdly, the issuance of the letter of acceptance dated 15th July 2022; and the consequential payments made thereunder did not revive and or resuscitate the dead letter of allotment. [See Henry Muthee Kathurima v Commissioner of Lands & another [2015] KECA 892 (KLR)]

125. Finally, the certificate of lease which the Plaintiff relies upon and propagates to lay a claim to the suit property, was procured unlawfully. Instructively, the said certificate of lease was obtained when the letter of allotment which birthed same had already lapsed and stood extinguished. Simply put, the certificate of lease was procured in vacuum.

126. In the circumstances, I find and hold that the certificate of lease is defeated by the doctrine of ex nihilo nihil fit [out of nothing comes nothing]. The import of the said doctrine was highlighted and expounded by the Court of Appeal in the case of Caroget Investment Limited v Aster Holdings Limited & 4 others [2019] KECA 79 (KLR), where the court stated thus;

> From the Council to the appellant and from the appellant to White Horse no title could be passed because ex nihilo nihil fit – out of nothing comes nothing.

127. Turning to the second issue, namely; whether the suit property is public property belonging to the 1st defendant herein [the county government of Meru]; it is instructive to observe that the suit property is situated/located within the county of Meru. Furthermore, the suit property is located

within the municipality. To this end, there is no gainsaying that what constitutes the suit property was previously situated within the municipality of meru and thus fell within the jurisdiction/mandate of the municipal council of Meru [now defunct].

128. The fact that the suit property is situated within the municipality of meru was confirmed and acknowledged by PW 2, namely; Livingstone Kamande Gitau.

129. It was the testimony of the said witness that same is a licensed surveyor and was retained by the plaintiff to undertake survey of the suit property. To this end, the said witness averred that the location of the suit property was pointed out to him prior to and before the survey exercise.

130. Pertinently, PW 2 stated as hereunder while under cross-examination by learned counsel for the 1st defendant:

> I am conversant with the area where the land in question is located. The land is located within the municipality of Meru. I was shown the land in question.

131. It is also important to take cognizance of the evidence of PW 3 namely Cyprian Kirera Irungu. Same testified that he was retained by the Plaintiff to undertake valuation in respect of the suit property. To this end, the witness averred that same visited the suit property and thereafter undertook the requisite valuation. In particular, the witness stated that the land in question is located in the neighbourhood of various hotels including; Meru Slopes and Alba Hotel, respectively.

132. From the evidence on record, there is no gainsaying that the suit property fell within the geographical jurisdiction of the municipal counsel of meru [now defunct]. Furthermore, it is also common ground that the assets and properties previously belonging to the local authorities were assumed and taken over by the respective County governments. [see Section 55, 56 and 57 of the Urban Areas Act & Cities 2011].

133. Other than the foregoing, it is also important to highlight that the immovable properties that fell within the jurisdiction of the local authorities, including the municipal council of Meru were regulated pursuant to the provisions of the trust *land act*, Cap 288 laws of Kenya [now repealed]. Under the said act, the commissioner of lands [now defunct] could only issue a letter of allotment upon the recommendation of the designated local authority, in this case the municipal council of meru.

134. I have no doubt in my mind that the suit property was trust land and hence could not have been allocated to the plaintiff without the involvement and or concurrence of the municipal council of meru [now defunct]. Suffice it to posit that the provision[s] of Section 53 of the Trust *Land Act*, Chapter 288, Laws of Kenya [now repealed] were applicable.

135. Nevertheless, while dealing with issue number one, I have found and held that the letter of allotment which was issued to and in favour of the plaintiff lapsed and was therefore rendered extinct. To this end, it means that by the time the lease Instrument over and in respect of the suit property was being prepared and issued, the land in question was public land belonging to and falling within the jurisdiction of the 1st respondent. [See Article 62 (1) & (2) of *the Constitution* 2010.

136. In so far as the suit property was public land falling within the jurisdiction of the 1st defendant, it is common ground that same could only be alienated and or disposed of in accordance with the provisions of sections 9;12;and 14 of the *Land Act* 2012 [2016] as read together with Rule 3 of the Land (Public Land Allocation) Regulations 2017.

137. The provisions of regulation 3 supra states as hereunder;

Methods of allocation of public land

(1) Pursuant to section 12(1) of the Act, the Commission shall upon the request of the national or a county government, where necessary, allocate the whole or part of a specific public land, by—

(a) public auction;

(b) application confined to a targeted group of persons or groups;

(c) public notice of tenders;

(d) public drawing of lots;

(e) public request for proposals; and

(f) public land exchange of equal value.

(2) In determining the method of allocation, the Commission shall, in consultation with the national government or respective county Government as the case may be, take into consideration all prevailing circumstances including the purpose for the allocation.

138. It was incumbent upon the Plaintiff to demonstrate that the process attendant to the allocation of public land as prescribed vide sections 9 & 12 of the *Land Act*, 2012 [2016]; was complied with. However, evidence abound that the County Government of Meru was not involved in the alienation of the suit property to the plaintiff. For good measure, the Plaintiff who testified as PW 1 contended that the suit property was allocated to him by the national government. Moreover, the witness reiterated that the county government was not involved.

139. Additionally, it is imperative to observe that no public land could have been allocated, transferred and registered in the name of the Plaintiff post the year 2010 [upon the promulgation of the 2010 Constitution] without the sanction and authority of the national land commission. Instructively, it is the said commission that was and is mandated to administer and manage public land on behalf of the National Government and the County Government [See Article 67 (2) of *the Constitution* 2010.

140. The legal position pertaining to the mandate of National Land commission to manage and administer land on behalf of both the national government and the county government was expounded by the Supreme Court [the apex Court] in the case of National Land Commission v Attorney-General & 5 others; Kituo Cha Sheria & another (Amicus Curiae) (Advisory Opinion Reference 2 of 2014) [2015] KESC 3 (KLR) (2 December 2015) (Advisory Opinion) where the court stated thus; [paragraphs 222 – 224]

> The *Land Act* defines "alienation" as the sale or other disposal of rights to land, while the NLC Act confers the power of alienation of public land upon the NLC. Thus, the disposal of such land can only be done by the Commission, with the consent of the National or County Government. The NLC, in effect, has been granted the power to sell or dispose of public land, on behalf of the National and County Governments. The National or County Government has to give consent, for such disposal.
>
> 223. It may be inferred that, the power of alienation of public land is one of the ways through which the NLC administers such land. The requirement of consent to such a transaction, from the National or County Government, is certainly a check-and-balance relationship between the two State organs. The NLC's function of monitoring the registration of all rights and interests in land, is another mechanism of checking the powers of the body responsible for registration. Section 5(2)(e) of the NLC Act-versus-*the Constitution*'s terms

> 224. Section 5(2)(e) of the NLC Act mandates the Commission to manage and administer all unregistered trust land and unregistered community land on behalf of County Government. Counsel for the Commission for the Implementation of *the Constitution* submitted that this provision was contrary to the terms of *the Constitution*. In the case, In Re IIEC, this Court had held that while exercising its Advisory Opinion jurisdiction, it may undertake the interpretation of *the Constitution*.

141. Suffice it to posit that the power to administer and manage public land by the national land commission includes, allocation and alienation. For good measure, the import and tenor of the terminology administer and manage was clarified by the Court of Appeal in the case of Cordison Investments Ltd vs The Chairperson National Land Commission [2019] eKLR.

142. The Court of Appeal stated thus;

> " 30. Article 67 of *the Constitution* that establishes the National Land Commission gives it power to, inter alia, manage public land on behalf of the national and county governments. The suit land is public land as defined under Article 62(1) (a) of *the Constitution* and therefore vests in and is held by the County Government of Lamu in trust for the people resident in the County. Article 62 (2) of *the Constitution* provides that the land shall be administered on behalf of the County residents by the National Land Commission. Section 5 (1)(a) of the *National Land Commission Act* is also explicit that one of the functions of the National Land Commission is to manage public land on behalf of the national and county governments. Under section 5(2) of the Act the Commission may, "on behalf of, and with the consent of the national and county governments, alienate public land."
>
> 31. Section 12 of the *Land Act* grants the Commission authority to allocate public land on behalf of the national or county governments and section 14 of the Act specifies the steps that the Commission ought to take before it undertakes any such allocation. The Commission has to issue, publish or send a notice of action to the public and interested parties, at least thirty days before offering for allocation a tract or tracts of land."

143. To my mind, it behooved the Plaintiff to place before the court evidence to show that the issuance of the impugned lease instrument, which culminated into the ultimate registration and issuance of a certificate of lease was in line with the prescription of the law.

144. Sadly, no such evidence was tendered.

145. On the contrary, the 1st defendant herein demonstrated that the suit property, which is currently registered in the name of the plaintiff, falls within her jurisdiction. Furthermore, the 1st defendant also tendered evidence that the land which shares a common boundary with the suit property was alienated to and in favour of the 6th defendant, albeit with the approval and concurrence of the 1st defendant.

146. In this regard, it is common ground that the suit property could not have been dealt with, alienated and or transferred to the plaintiff without the involvement of the 1st defendant [the County Government of Meru].

147. Flowing from the foregoing; and taking into account the evidence of DW 2, I come to the conclusion that the suit property is indeed public property belonging to and falling within the purview of the 1st defendant. [See Article 62 (1) of *the Constitution* 2010].

148. Turning to the third issue, namely; whether the plaintiff has proved trespass onto the suit property by the 1st and 6th defendant respectively, it is imperative to recall and reiterate that the plaintiff contended that the named defendants have erected a wall on the suit property. Furthermore, the plaintiff testified that as a result of the offensive wall same [plaintiff] has been barred from entering upon, taking possession of; and developing the suit property.

149. It is on the basis of the offensive actions [trespass] by and on behalf of the 1st & 6th defendants that the plaintiff herein has sought inter alia punitive and exemplary damages.

150. However, it is important to point out that any claimant seeking to propagate a claim for trespass, the plaintiff herein not excepted, must first and foremost establish ownership or title to the immovable property, or an immediate right to exclusive possession of the suit property. Simply put, ownership and title to the immovable property constitute preemptory ingredients underpinning a claim for trespass and entitlement to peaceful occupation of [sic] the suit property.

151. In the case of Doshi vs Justice Charles Chemutut & 7 others (2025) KECA the court of appeal stated as hereunder;

> Trespass, as stated by this Court in the case of Charles Ogejo Ochieng v Geoffrey Okumu [1995] KECA 169 (KLR), is an injury to a possessory right, and therefore the proper plaintiff in an action of trespass to land is the person who has title to it, or a person who is deemed to have been in possession at the time of the trespass. As for the ingredients of trespass, the Court in William Kamunge Gakui v Eustace Gitonga Gakui (Civil Appeal 16 of 2013) [2014] KECA 39 (KLR) stated that trespass is a violation of the right to possession, and that a plaintiff must prove that he has the right to immediate and exclusive possession of the land. Justice Chemutut did not name Mr. Doshi as a defendant in the suit.

152. Having found and held that the certificate of lease in favour of the plaintiff was procured irregularly and illegally, it is common ground that the plaintiff herein does not have any valid title; and or ownership rights over the suit property. Absent ownership rights or title to the suit property, the plaintiff herein cannot be heard to contend that the 1st & the 6th defendants have trespassed onto [sic] his plot and thereafter deprived same of the right to peaceful/peaceable occupation. Simply put, the contention by the plaintiff that his rights have been interfered with is premised on quicksand.

153. Regarding the last issue, namely; what reliefs [if at all] ought to issue, it is instructive to recall that both the plaintiff and the 1st defendant have sought diverse reliefs. For coherence, the plaintiff has sought relief[s] seeking a declaration that same is the lawful and valid proprietor of the suit property. In addition, the plaintiff has also sought reliefs to the effect that the acreage of the suit property was illegally and or fraudulently altered to his detriment. To this end, the plaintiff has invited the court to decree and declare that the correct acreage of the suit plot ought to and should be 0.1 ha. [same being the acreage that was reflected at the foot of the letter of allotment dated 1st July 1997.

154. I beg to state that the plaintiff herein would have been entitled to the requisite declaration and protection of his title, had same placed before the court credible transactional document underpinning the certificate of lease. However, I have pointed out elsewhere herein before that the certificate of lease in favour of the plaintiff was irregularly and illegally acquired. In this regard, I am afraid that the plaintiff cannot partake of or benefit from the declaratory orders sought.

155. For good measure, the declaratory orders under reference cannot issue to vindicate an illegality. [see Article 40 (6) of *the constitution* 2010. See also the holding in the case of Kenya National Highway Authority v Shalien Masood Mughal & 5 others [2017] KECA 465 (KLR).

156. Furthermore, the plaintiff also sought for a mandatory injunction to evict and or remove the defendants, either by themselves, agents, servants and or employees from the suit property. Pertinently, the plaintiff is seeking an order of eviction. Nevertheless, it is not lost on me that an order of eviction [by whatever name] cannot issue until and unless the claimant can demonstrate lawful entitlement to the designated immovable property. In this regard, the plaintiff could only partake of an order of eviction if same had lawful title to and in respect of the suit property. Sadly, that is not the case.

157. Additionally, the plaintiff sought for an order of permanent injunction to restrain the defendants, either by themselves, agents and or servants from interfering with the suit property. However, it is instructive to recall that while dealing with issue number two [2]; I found and held that the suit property is public land belonging to and falling within the purview of the 1st defendant. To this end, an order of permanent injunction would not only be unjust but inequitable. Moreover, there is no gainsaying that an order of permanent injunction cannot issue as against [sic] the registered or lawful owner of the immovable property.

158. In the case of Nguruman Limited v Jan Bonde Nielsen & 2 others [2014] KECA 606 (KLR) the Court of Appeal addressed a similar situation. For coherence, the court stated as hereunder;

> It must also be remembered that it is a serious thing to restrain a registered proprietor of a property over what is undeniably his unless there are justifiable grounds to do so.

159. Turning to the question of recompense, I beg to state that the plaintiff also sought for payment of punitive and exemplary damages. Nevertheless, it is important to highlight that the payment of such damages [if at all] would have been dependent on proof of ownership rights in respect of the suit property. Furthermore, it is common ground that before a court of law can proceed to and award punitive/exemplary damages, the claimant must establish certain conditions. [See the decision of the Court of Appeal in the case of Municipal Council of Eldoret vs Titus Gatitu Njau (2020) eKLR].

160. As concerns the instant matter, I am afraid that the plaintiff herein neither established nor proved the requisite basis to warrant the grant of such damages. In any event, it is imperative to state that there is a dichotomy between general damages; on one hand and punitive/exemplary damages. Suffice it to state that award of the latter require[s] proof of certain condition[s].

161. The 1st defendant filed a statement of defence and counterclaim and same sought various reliefs. In particular, the 1st defendant sought a declaration that the title of the suit property, namely; the certificate of lease in the name of the plaintiff [defendant to the counterclaim] was procured illegally, unprocedurally and fraudulently. To this end, the 1st defendant/counter claimer sought nullification of the certificate of lease; the survey plans; the registry index map and all documents underpinning the existence of the suit property.

162. I beg to state that while addressing issue number two;, I found and held that the suit property fell within the mandate/jurisdiction of the municipal council of Meru [now defunct]. In addition, I also found and held that the suit property could not have been alienated without the concurrence/approval of the municipal council of Meru. [See the provisions of Section 53 of the Trust *Land Act* Cap 288 Laws of Kenya [now repealed], [see also sections 114, 115 and 117 of the retired constitution].

163. First forward, I also established that by the time the certificate of lease was being issued in favour of the plaintiff/defendant to the counterclaim, the suit property was public land falling under the jurisdiction

of the 1st defendant. Moreover, the suit land could not be alienated on the basis of the lease instrument in the year 2022 without compliance with the provisions of section 12 of the *Land Act*; as read together with regulation 3 of the Land [Public Land Allocation] Regulations 2017.

164. In the premises, I find and hold that the counterclaim by the 1st defendant has been established; proved; and substantiated. In this regard, a basis has been duly laid to warrant the nullification/cancellation of the certificate of lease in favour of the plaintiff/defendant to the counterclaim.

Final Disposition.

165. Flowing from the discussion contained in the body of the Judgment, it must have become crystal clear that the plaintiff herein has failed to establish and prove his claim over the suit property. Further, and in any event, it is evident that the certificate of lease in favour of the plaintiff was/is vitiated with illegality.

166. On the contrary, the 1st defendant has ably demonstrated that the suit property belonged to the municipal council of Meru [now defunct] and now constitutes public land falling within the jurisdiction of the 1st defendant [the county government of Meru]. Furthermore, the 1st defendant has also demonstrated that the process leading to the preparation, execution, engrossment of the lease Instrument; and thereafter the certificate of lease; in favour of the Plaintiff was laced with illegalities.

167. Consequently, and in the premises the final orders that commend themselves to the court are as hereunder;

a. The Plaintiff's suit be and is hereby dismissed.

b. Costs of the suit be and are hereby awarded to the Defendants

c. The 1st defendant's counterclaim be and is hereby allowed on the following terms:

i. A declaration be and is hereby issued that the defendant to the counterclaim [plaintiff in the main suit] illegally acquired the certificate of lease of Meru municipality/block 1/376.

ii. There be and is hereby issued an order for the nullification/cancellation of the certificate of lease in respect of L.R No. Meru Municipality Block I/376; surveying plan, registry index map, part development plan and registration transactions leading to registration of Meru Municipality/block 1/376.

iii. The Defendant to the counterclaim be and is hereby ordered and directed to surrender the certificate of lease in respect of the suit property to the county land registrar, Meru, for purposes of cancellation within 60 days from date hereof.

iv. The County Land Registrar – Meru shall nevertheless be at liberty to proceed and cancel the certificate of title/lease in respect to the suit property irrespective of failure to surrender same by the defendant to the counterclaim [subject to lapse of 60 days].

v. Furthermore, the County Land Registrar – Meru shall proceed to gazette the cancellation of the certificate of lease in respect to the suit property albeit at the expense of the 1st defendant/counter claimer.

vi. A declaration be and is hereby issued that Meru Municipality/Bloc/1/376 is public land falling within the jurisdiction of Meru County Government in terms of Article 62 (1) & (2) of *the Constitution* 2010.

vii. There be and is hereby issued an order of permanent injunction restraining the defendant to the counterclaim from entering, interfering, utilizing and or undertaking any act detrimental to public use in Meru Municipality/Block 1/376, [formerly known as a residential plot in Meru Municipality].

viii. Costs of the counterclaim be and are hereby awarded to the 1st defendant/counter claimer only.

168. It is so ordered.

DATED, SIGNED AND DELIVERED AT MERU THIS 25TH DAY OF SEPTEMBER 2025

OGUTTU MBOYA, FCIArb;CPM [MTI-EA].

JUDGE

In the presence of:

Hussein – Court Assistant

Mr. Opulu for the Plaintiff

Mr. Mwirigi Batista for the 1st Defendant/counter claimer

Ms. Miranda [Senior Litigation Counsel] for the 2nd, 3rd, 4th & 5th Defendants

Mr. Situma for the 6th Defendant