



REPUBLIC OF KENYA



**KENYA LAW**  
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**Ngirigorio aka Jane Wanjuhi Kahuhu v Gichuru & another; Nairobi City  
County (Interested Party) (Environment and Land Case 513 of 2015)  
[2025] KEELC 6604 (KLR) (30 September 2025) (Judgment)**

Neutral citation: [2025] KEELC 6604 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND CASE 513 OF 2015  
OA ANGOTE, J  
SEPTEMBER 30, 2025**

**BETWEEN**

**WANJIKU NGIRIGORIO AKA JANE WANJUHI KAHUHU ..... PLAINTIFF**

**AND**

**REGINAH WANJIKU GICHURU ..... 1<sup>ST</sup> DEFENDANT**

**MOHAMMED AILA OTE ..... 2<sup>ND</sup> DEFENDANT**

**AND**

**NAIROBI CITY COUNTY ..... INTERESTED PARTY**

**JUDGMENT**

1. The Plaintiff instituted this suit against Defendants jointly and severally on the 8<sup>th</sup> June, 2015 seeking the following reliefs:
  - i. Declaratory orders that the suit property that is to say, Plot No 72 Zone F Mathare Valley Joint Development Scheme (Nairobi) is solely owned by the Plaintiff.
  - ii. Declaratory orders that the Defendants' respective claims of ownership over the said suit property and any dealings over the same by the Defendants are null and void.
  - iii. Permanent Injunction orders restraining the Defendants by themselves, their servants, agents or persons claiming under them from entering into the suit property, demolishing the Plaintiff's premises and carrying out any works thereon, interfering in any manner whatsoever with the Plaintiff's occupation and registration of ownership of the suit land or dealing with it in any manner whatsoever.
  - iv. Special damages as pleaded herein.



- v. General damages/mesne profits.
  - vi. Costs of the suit.
  - vii. Interest.
2. The Plaintiff's case is that she is the owner of all that parcel of land known as Plot No 72, Zone F, Mathare Valley Joint Development Scheme (Nairobi) (hereinafter the suit property) by virtue of an allocation to her on the 22<sup>nd</sup> August, 1972 by the then City Council of Nairobi, the predecessor to the Nairobi City Council.
  3. The Plaintiff averred that in 1970, she was living in Ofafa Maringo with her husband, Kahuhu Wang'ang'a. However, in 1971, marital difficulties arose, prompting her to leave their matrimonial home and that she relocated to Mathare Valley, where she began using the name Wanjiku Ngirigorio in order to avoid being traced by her husband.
  4. It is the Plaintiff's case that in 1972, while residing in Mathare Valley, the then Nairobi City Council advertised plots for allocation in the area; that she applied for allocation of a plot using her adopted name and that at the time, she did not possess a National Identity Card, and it was not mandatory for women in Kenya to have one.
  5. It is the Plaintiff's case that in 1973, she reconciled with her husband and they resumed cohabitation; that with his assistance, she constructed premises on the suit property, which she has since occupied and managed by renting out to various tenants, the most recent being Bethrapha Church, which paid a monthly rent of Kshs 30,000 and that she also received and paid rates and other charges relating to the property.
  6. The Plaintiff further states that following the allocation, she was issued with a National Identity Card in her marital name, Jane Wanjuhi Kahuhu and that on 12<sup>th</sup> December 1984, she executed a deed poll formally renouncing her former name, Wanjiku Ngirigorio, and the change was gazetted on 4<sup>th</sup> April 1985.
  7. According to the Plaintiff, in 2013, she initiated the process of acquiring a title deed in her official name with the intention of constructing rental apartments on the property. However, during this process, the 1<sup>st</sup> Defendant began laying claim to the land and attempted to alter the official records.
  8. Similarly, it was averred, the 1<sup>st</sup> Defendant began interfering with her tenants on the suit premises by issuing threats of eviction, which led to their departure in March 2015 and that since then, no new tenants have taken up occupancy due to continued intimidation and threats from the 1<sup>st</sup> Defendant.
  9. According to the Plaintiff, she subsequently lodged a complaint with the Nairobi City County; that in response, the County authorities summoned the 1<sup>st</sup> Defendant to present any documentation in her possession and that while investigations were still ongoing, the 1<sup>st</sup> Defendant proceeded to transfer the property to the 2<sup>nd</sup> Defendant, relying on a purported Power of Attorney allegedly issued in her favour.
  10. Based on that transaction, it was contented, the 2<sup>nd</sup> Defendant has attempted to forcefully take possession of the property and demolish the existing structures, prompting her to deploy round-the-clock security at the premises from 3<sup>rd</sup> June 2015, incurring a daily cost of Kshs 6,000.
  11. The Plaintiff contends that the attempts to deprive her of the suit property are illegal and fraudulent. She attributes the following particulars of fraud to the 1<sup>st</sup> Defendant: unlawfully disposing of property to which she holds no title; attempting to alter official records at the Nairobi City County;



impersonating the Plaintiff to facilitate the irregular transfer and coercing tenants to vacate and thereby causing the Plaintiff financial loss and damage.

12. As regards the 2<sup>nd</sup> Defendant, the particulars of fraud were set out as follows: acquiring the suit property illegally; trespassing onto the suit property and attempting to demolish the Plaintiff's premises thereon; attempting to acquire the suit property despite having been informed of the Plaintiff's interests and causing the Plaintiff's tenants to vacate the suit property and incur losses.
13. The Plaintiff asserts that she has incurred losses of Kshs 30,000 per month on account of lost monthly rentals from 30<sup>th</sup> March, 2015, and Kshs 6,000 per day from 3<sup>rd</sup> June, 2015 being fees paid for security.
14. The 1<sup>st</sup> Defendant filed her Statement of Defence on 26<sup>th</sup> May 2017, denying the allegations made in the Plaint. She asserted that the Plaintiff is not Wanjiku Ngirigorio and was never allocated the suit property. According to her, she is the rightful owner of the land, having been allotted the same by the then City Council of Nairobi (now Nairobi City County) in 1972 upon payment of an allotment fee of Kshs 60/=.
15. The 1<sup>st</sup> Defendant averred that the allocation was granted as compensation for a previous plot she had occupied, Kijiji No. 3, located near the Airforce in Mathare, which had been demolished by the City Council.
16. She explained that the receipt for the allotment letter was destroyed in a fire that razed her house in 1999, a matter she reported under OB No. 22/30/6/2014 and that at the time the County begun allocating the plots to those who had paid for the same, she was hospitalized and upon her discharge two months later, she discovered that the Nairobi City Council had issued allotment letters.
17. It is the 1<sup>st</sup> Defendant's case that during this time, the Plaintiff had unlawfully assumed the identity of Wanjiku Ngirigorio and managed to obtain her allotment letter.
18. The 1<sup>st</sup> Defendant maintains that she is the legitimate allottee of the suit property, having applied under her maiden name, Wanjiru, and her husband's first name, Gregory meaning "Ngirigorio" in Kikuyu. She emphasizes that at the time, women were not required to have identity cards, which explains the use of such names.
19. She argues that the Plaintiff has failed to produce any documentation proving that she applied for the allotment, paid any requisite fees, or to explain the basis upon which the land was allegedly allocated to her.
20. Moreover, she states, the Plaintiff has not presented any supporting evidence showing she had always been referred to as Wanjiku Ngirigorio as alleged. Such proof, she stated, would include marriage certificate, baptismal card, educational certificates or other identification documents prior to the registration of her change of name in 1985 from Wanjiku Ngirigorio to Jane Wanjuhi Kahuhu.
21. The 1<sup>st</sup> Defendant contends that it is ironic the Plaintiff did not pay any rates for the suit property from the time of the alleged allocation in 1972 until 2013; that she only discovered the suit plot had been taken over when, in 2013, a man identifying himself as Mr. Ng'ang'a, the Plaintiff's son, approached her and requested that she transfers the property to the Plaintiff for a small consideration and that when she asked him to produce the original allotment letter to support the request, Mr. Ng'ang'a never returned.
22. The 1<sup>st</sup> Defendant denied allegations that she interfered with tenants on the suit property. She stated that she visited the offices of the Nairobi City County and submitted a sworn affidavit detailing the loss of her original receipt for Kshs 60, which had been issued upon payment for the allotment letter, and



- that the Council affirmed that she was the genuine allottee of the suit property and thereafter calculated the outstanding dues, which she paid, and was subsequently issued with a fresh allotment letter.
23. According to the 1<sup>st</sup> Defendant, as the legal owner of the suit property, she sold it to the 2<sup>nd</sup> Defendant, who having lawfully acquired it, was entitled to take possession. She argues that the Plaintiff has no legitimate basis to allege fraud in the sale. Instead, she accuses the Plaintiff of fraudulently claiming ownership of the land by adopting a name that was not hers.
  24. The 2<sup>nd</sup> Defendant filed a Defence on the 4<sup>th</sup> September, 2017. He denied the assertions as set out in the Plaintiff in particular that the names Wanjiku Ngirigorio belong to the Plaintiff, or that she was allocated the suit property and is the owner thereof.
  25. It is the 2<sup>nd</sup> Defendant's case that the suit plot was allocated to the 1<sup>st</sup> Defendant by the then City Council of Nairobi as compensation for a previous plot, Kijiji No 3, next to Airforce situated at Mathare after the then City Council of Nairobi demolished her house amongst other houses to pave way for construction of a road.
  26. The Interested Party filed a Defence on 11<sup>th</sup> March, 2021. It denied the assertions as set out in the Plaintiff stating that as per its allotment letter dated 22<sup>nd</sup> August, 1972, the suit property was allocated to one Wanjiku Ngirigorio; that the Plaintiff served it with a deed poll dated the 19<sup>th</sup> December, 1984, Kenya Gazette dated 19<sup>th</sup> April, 1985 and a registration of the deed poll dated 31<sup>st</sup> December, 1984, all confirming that the said Wanjiku Ngirigorio had changed her name to Jane Wanjuhi Kahuhu and that based on the foregoing, they updated the records to reflect the owner as one Jane Wanjuhi Kahuhu.
  27. On 12<sup>th</sup> February, 2015, it was stated, the Interested Party received a letter from the 1<sup>st</sup> Defendant complaining about changes in ownership. It was averred that the Interested Party had no choice but to cancel the ownership changes and cause the property to revert to the name of the original owner, one Wanjiku Ngirigorio.
  28. The matter proceeded for hearing on 27<sup>th</sup> September, 2021. The Plaintiff, PW1, testified that she is Jane Wanjuhi Kahuhu, also known as Wanjiku Ngirigorio. She adopted her witness statement dated 8<sup>th</sup> June, 2015 as her evidence in chief and the bundle of documents filed on 9<sup>th</sup> June, 2015 as PEXHB1-19. She also produced the further list of documents filed on 17<sup>th</sup> January, 2021 as PEXHB20.
  29. PW1 testified that her husband is Kahuhu Nganga; that they initially lived together in Ofafa Maringo; that in 1972, following their separation, she moved to Mathare Valley and that while residing there, she adopted the name Wanjiku Ngirigorio in order to conceal her identity from her husband. At the time, she did not possess a National Identity Card.
  30. She stated that she is now 87 years old and has since been issued with an identity card. She testified that she was allocated the suit plot while living alone in Mathare Valley, and that upon reconciling with her husband, they jointly developed the property. It was her testimony that she lived on the plot with her children and gave birth to all of them there, with her last born being born in 1982. She stated that she has since moved to Kiambu, where she currently rents a house.
  31. PW1 stated that the last tenant on the plot was a church, which continued to use the premises until the dispute arose; that she does not know the 1<sup>st</sup> Defendant personally; that since the dispute began, she has been paying Kshs 6,000 per day for security services; that no one has ever taken possession of the land other than herself and that she has been consistently paying land rates to the Nairobi City County.
  32. PW1 explained that she eventually abandoned the name Wanjiku Ngirigorio and executed a deed poll to that effect, which was gazetted on 7<sup>th</sup> April 1985 and that she also swore a statutory declaration in 1984 and retained receipts for payments related to the gazette.



33. In cross-examination, PW1 testified that she adopted the name Wanjiku Ngrigorio after separating from her husband. She stated that the plot was allocated to her by the then City Council but admitted that she did not make any payment for it neither did she sign the allotment letter. It was her testimony that at the time of the allocation, she did not possess any identity documents to present to the Council.
34. PW1 further testified that it was her husband who made payments for land rates and the evidence shows that these rates were paid in 2013. She acknowledged that they did not obtain any formal building approvals for the structures erected on the land. According to her, no one was aware of her identity as Wanjiku Ngrigorio and that the deed poll was done by her cousin.
35. In re-examination, PW1 maintained that she has always been in possession of the land, initially using it personally and later renting it out. She explained that her husband holds all the relevant documents concerning the property and that she does not know how to read or write and instead uses a fingerprint for signing documents. She affirmed that a photograph was required and she submitted it during the allotment process.
36. The 1<sup>st</sup> Defendant testified as DW1. She adopted her witness statement filed on 30<sup>th</sup> May, 2017 as her evidence in chief and produced the bundle of documents dated 14<sup>th</sup> December, 2018 as 1DEXHB1.
37. It was her evidence vide the statement that she was allotted the suit property by the Nairobi City Council in 1972 upon payment of allotment fees of Kshs 60; that the plot was compensation for her previous plot at Kijiji No 3 next to Airforce at Mathare which had been demolished by the County to pave way for a road and that the receipt thereof got burned in a house fire sometime in 1999 and which she reported to the police and was issued with OB No 22/30/6/2014.
38. DW1 stated that at the time of the allocation, she did not have an identity card since none was being issued at the time to women; that Wanjiku is her middle name whereas the name 'Ngrigorio' is derived from her husband's name 'Gregory' and that when the Council was issuing out allotment letters, she was in hospital and after her discharge two months later, her attempts to get the allotment letter were futile as the same could not be traced by the County Council.
39. It was her evidence that in the year 2014, she discovered that the plot she had been allotted had been taken by the Plaintiff when the Plaintiff's two sons informed her that they had her allotment letter and asked that she transfers the plot to them as they had a pending court case which they needed to conclude. She asked Mr Ngá'nga, the Plaintiff's older son to bring her the plot documents to enable her effect the transfer but he never went back.
40. According to DW1, she filed a complaint against the Plaintiff at the District Officer's office in Mathare, demanding that the Plaintiff vacate the property and that the investigations concluded that she was the rightful owner of the property.
41. In cross-examination, the 1<sup>st</sup> Defendant admitted that she does not have any evidence to show that she previously resided near the Kenya Airforce base, or that she was displaced and promised alternative land. She stated that she reported the fire that allegedly destroyed her documents at Kayole, because she was residing there at the time and that she made another report at Huruma.
42. DW1 confirmed that she sold the suit property to the 2<sup>nd</sup> Defendant for Kshs 3,000,000 and that the payment was made via a bank deposit, although she did not have the bank slip to prove it. It was her evidence that she refunded the same after the dispute arose. She further explained that she is unable to read or write.



43. She stated that the Plaintiff has been in occupation of the property since 1972 while she was searching for the file and that she was eventually issued with a copy of the allotment letter although it did not resemble the one in the Plaintiff's possession, as the names differ.
44. DW2 was Gyneth Magiri, the Chief Valuer of the Interested Party. She adopted her witness statement dated 15<sup>th</sup> March, 2021 as her evidence in chief and a bundle of documents dated 11<sup>th</sup> March, 2021 as 2DEXHB1.
45. It was her evidence that she is in possession of a letter of allotment dated 22<sup>nd</sup> August 1972, which bears the name "Wanjiku Ngorigorio" as the allottee and that the Plaintiff's letter of allotment reflects a slightly different spelling "Wanjiku Ngorigorio."
46. She confirmed that they have a certified copy of their version of the allotment letter. She noted that while it is now standard practice that one must be of majority age and possess a national ID to be allotted land, she is unsure of what the practice was in 1972. She added that their records include a copy of the image associated with the person who was originally allocated the property.
47. During cross-examination, she testified that under current procedures, no one can be registered as an allottee without a national ID. She admitted that she has never visited the land in question, and that there are restrictions on developments on the suit property, which remains un-surveyed. The 2<sup>nd</sup> Defendant did not participate in the hearing.

### Submissions

48. The Plaintiff, through Counsel, filed submissions on 30<sup>th</sup> April, 2025. Counsel submitted that it is trite law that he who alleges must prove and the burden of proving the existence of facts is a common law and statutory requirement as set out in Sections 107(1), 109 and 112 of the *Evidence Act*, Cap 80 reiterated in the case of *Springboard Capital Limited vs Njenga & Another* [2024] KEHC 7013 (KLR).
49. It was submitted that the evidence by the Plaintiff establishes that she is the lawful owner of the suit property having acquired it under her lawful alias Wanjiru Ngorigorio, and having been in possession thereof for approximately 42 years.
50. In any event, it is stated, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants have not filed any counterclaim and being bound by their pleadings, the only remedies that the court can consider are those in the Plaintiff. Reliance in this regard was placed on the case of *Siengo vs Ajwala* [2023] KEELC 403 (KLR).
51. According to Counsel, the Plaintiff has been in quiet and uninterrupted possession of the property for over 42 years. As such, the doctrines of adverse possession and estoppel apply to bar any competing claim. Counsel argued that, by operation of law, any title or interest the 1<sup>st</sup> Defendant may have had in the property was extinguished by the Plaintiff's long-standing occupation. Reliance in this regard was placed on the case of *David Sironga Ole Tokai vs Francis Arap Muge & 2 Others* [2014] eKLR.
52. It was submitted that the Plaintiff is entitled to the reliefs sought, all of which fall within the jurisdiction of this court as provided under Section 13(7) of the *Environment and Land Court Act*.
53. In relation to special damages, it was argued that prior to the unlawful eviction of her tenants from the suit property, the Plaintiff was earning rental income of Kshs 30,000/= per month as at 30<sup>th</sup> March 2015, in addition to incurring security charges amounting to Kshs 6,000 daily. It was submitted that as these losses were directly occasioned by the actions of the 1<sup>st</sup> Defendant, the Plaintiff is entitled to recover the same.



54. On the issue of general damages, Counsel submitted that the Plaintiff has been deprived of possession and use of the suit property for a period of approximately 10 years. As a result, it was submitted, she is entitled to an award of general damages for the prolonged deprivation. In support of this position, reliance was placed on the decision in *Nakuru Industries Limited vs S.S. Mehta & Sons* [2016] eKLR.
55. The 1<sup>st</sup> Defendant filed submissions on 1<sup>st</sup> July, 2025. Counsel submitted that the Plaintiff failed to substantiate her allegations that she was once known as Wanjiku Ngirigoria and her change of name in this regard was deceptive and aimed at fraudulently accessing the suit property.
56. Counsel submitted that the Plaintiff impersonated the 1<sup>st</sup> Defendant as the 1<sup>st</sup> Defendant and presented herself to the Nairobi City Council to get the allotment letter. Counsel pointed the court to the case of *Mwangi James Njehia vs Janetta Wanjiku Mwangi & Anor* [2021] eKLR which highlighted the growing trend of fraudulent dealings in land transactions, noting that fraudsters have increasingly succeeded in manipulating the land registration system.
57. Counsel submitted that the Plaintiff did not discharge the burden of proof placed on her to establish the legitimacy of her ownership of the suit property and that the letter of allotment, in any event, differs from that issued by the allotting authority. It was submitted that in *John Muraya Mukururo vs Zipporah Kinuthia & Another* [2014] eKLR, the court found in favour of the Plaintiff whose allotment letter had been fraudulently taken by the 1<sup>st</sup> Defendant who sold the offer to the 2<sup>nd</sup> Defendant.
58. The Interested Party did not file submissions.

### **Analysis & Determination**

59. Having considered the pleadings, testimonies and submissions, the following arise as the issues for determination;
  - i. Whether the Plaintiff is the legitimate owner of the suit property?
  - ii. What are the appropriate orders to issue?
60. The Plaintiff instituted this suit against the Defendants seeking, inter-alia, declaratory orders that she is the owner of the suit property and that the Defendants claims over the suit property are void, permanent injunctive orders restraining the Defendants from interference with the suit property and special and general damages.
61. The Plaintiff contends that she was allocated the suit property in 1972 by the predecessor of the Nairobi City County, then known as the Nairobi City Council. It is her case that at the time of allocation, she had separated from her husband and was using the name “Wanjiku Ngirigorio”, which was not her real name, and that the letter of allotment letter was issued under the said name.
62. According to the testimony of the Plaintiff, she later reconciled with her husband, Kahuhu Ng’ang’a, and reverted to her original name, Jane Wanjuhi Kahuhu, in which she was eventually issued with a national identity card.
63. She stated that in 2013, when she initiated the process of obtaining a title for the property, the 1<sup>st</sup> Defendant began making unlawful claims over the land and subsequently took possession of the same, later selling it to the 2<sup>nd</sup> Defendant thus interfering with her proprietary rights.
64. The Plaintiff adduced into evidence the letter of allotment dated 22<sup>nd</sup> August, 1972, rates bills and receipts, deed poll dated 20<sup>th</sup> December, 1984 and statutory declaration sworn on 19<sup>th</sup> December, 1984, and the application for registration and payment for the deed poll.



65. She also adduced a Gazette Notice no 1382 published on the 4<sup>th</sup> April, 1985, her National ID Card, rent payment receipts, correspondences, power of attorney executed by the 1<sup>st</sup> Defendant on 10<sup>th</sup> April, 2015, 2<sup>nd</sup> Defendant's application for letter of allotment, marriage certificate and photos thereof, funeral advert, eulogy, ID and Pin for Peter Kahuhu Wang'anga.
66. On her part, the 1<sup>st</sup> Defendant asserts that she is the legitimate proprietor of the suit property after being allotted the same by the Nairobi City Council, it being compensation for a previous plot which they reclaimed, and that she paid Kshs 60 and was due to be issued with an allotment letter but when she went to get the same, she was informed that it could not be traced.
67. She asserted that the property was allotted to her under her maiden name Wanjiku and her husbands' name Gregory translated to Ngrigorio. She stated that in 2013, she discovered that the Plaintiff was the one who had taken over her property and her entitlement thereto was confirmed by the Nairobi City Council.
68. The 1<sup>st</sup> Defendant adduced into evidence a copy of her marriage certificate, baptismal card of Gregory Gichuru, Affidavit sworn on the 5<sup>th</sup> September, 2013, rates, ground rent, survey fees and stand premium receipts from Nairobi City Council, allotment letter dated 22<sup>nd</sup> August, 1972 and a certified copy thereof, a copy of the allotment letter issued to the Plaintiff, OB report 96/6/11/2015, sale agreement between herself and the 2<sup>nd</sup> Defendant dated 10<sup>th</sup> April, 2015, a report dated 27<sup>th</sup> July, 2016 from the National Bureau on fingerprint verification and correspondences.
69. The 2<sup>nd</sup> Defendant did not participate in the proceedings.
70. The Interested Party's position is that it allotted the suit property to Wanjiku Ngrigorio. Thereafter, the Plaintiff approached it stating that she was Wanjiku Ngrigorio but had changed her name to Jane Wanjuhi Kahuhu leading them to reflect the change in their records. They however received a similar complaint from the 1<sup>st</sup> Defendant leading them to change the name back to Wanjiku Ngrigorio.
71. The Interested Party adduced into evidence various correspondence by the Plaintiff, the 1<sup>st</sup> Defendant and itself, copies of the deed poll served upon them by the Plaintiff, demand for rates for the suit property dated 13<sup>th</sup> December 2012, the 1<sup>st</sup> Defendant's affidavit sworn on 3<sup>rd</sup> July, 2014, the Police Abstract, the 1<sup>st</sup> Defendant's ID, application for registration of deed poll dated 31<sup>st</sup> December, 1984, rates demand dated 25<sup>th</sup> September, 2014, receipt dated 23<sup>rd</sup> April, 1986 and a copy of gazette notice.
72. As previously noted, the Plaintiff contends that she is the legitimate owner of the suit property. To succeed in this claim, the Plaintiff bears the legal burden of proving the same. This requirement is anchored in the fundamental principle of law that he who alleges must prove. This legal maxim is enshrined in Section 107(1) and (2) of the *Evidence Act*, Cap 80, Laws of Kenya, which provides as follows:
1. Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.
  2. When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person."
73. And Sections 109 and 112 of the same *Act* which state:
- "109. The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.



“112. In civil proceedings, when any fact is especially within the knowledge of any party to those proceedings, the burden of proving or disproving that fact is upon him.”

74. The majority decision of the Supreme Court in Presidential Election Petition No. 1 of 2017 - *Raila Amolo Odinga & Another vs IEBC & 2 Others* (2017) eKLR had the following to say on the question of the legal and evidential burden of proof:

“Though the legal and evidential burden of establishing the facts and contentions which will support a party’s case is static and “remains constant through a trial with the plaintiff, however, “depending on the effectiveness with which he or she discharges this, the evidential burden keeps shifting and its position at any time is determined by answering the question as to who would lose if no further evidence were introduced.”

75. It is noted that the Plaintiff has set out allegations of fraud. The Black’s Law Dictionary defines fraud thus:

“Fraud consists of some deceitful practice or willful device, resorted to with intent to deprive another of his right, or in some manner to do him an injury. As distinguished from negligence, it is always positive, intentional. Fraud, as applied to contracts, is the cause of an error bearing on a material part of the contract, created or continued by artifice, with design to obtain some unjust advantage to the one party, or to cause an inconvenience or loss to the other. Fraud, In the sense of a court of equity, properly includes all acts, omissions, and concealments which involve a breach of legal or equitable duty, trust, or confidence justly reposed, and are injurious to another, or by which an undue and unconscientiously advantage is taken of another.”

76. It is trite law that fraud must not only be pleaded and particularized but strictly proven. This position was affirmed by the Court of Appeal in *Demutilla Nanyama Pururmu vs Salim Mohamed Salim* [2021] eKLR relying on an earlier exposition by *Vijay Morjaria vs Nansingh Madhusingh Darbar & Another* [2000]eKLR thus:

“It is well established that fraud must be specifically pleaded and that particulars of the fraud alleged must be stated on the face of the pleading. The acts alleged to be fraudulent must, of course, be set out, and then it should be stated that these acts were done fraudulently. It is also settled law that fraudulent conduct must be distinctly alleged and distinctly proved, and it is not allowable to leave fraud to be inferred from the facts.”

77. As regards the standard of proof, the Court of Appeal in *Demutilla Nanyama Pururmu vs Salim Mohamed Salim* (supra) looked into its earlier decision in *Kinyanjui Kamau vs George Kamau* [2015] eKLR wherein it had held:

“...It is trite law that any allegations of fraud must be pleaded and strictly proved. See *Ndolo vs Ndolo* (2008) 1 KLR (G & F) 742 wherein the Court stated that: “...We start by saying that it was the respondent who was alleging that the will was a forgery and the burden to prove that allegation lay squarely on him. Since the respondent was making a serious charge of forgery or fraud, the standard of proof required of him was obviously higher than that required in ordinary civil cases, namely proof upon a balance of probabilities; but the burden of proof on the respondent was certainly not one beyond a reasonable doubt as in



criminal cases...”...In cases where fraud is alleged, it is not enough to simply infer fraud from the facts.”

78. The court will be so guided.

79. It is not disputed that the property, the subject of the present dispute, is yet to be registered. Courts have held that proof of ownership of unregistered land is to be found in documentary evidence which leads to the root of title. Speaking to this, the court in *Caroline Awinja Ochieng & Another vs Jane Anne Mbithe Gitau & 2 Others* [2015]eKLR persuasively expressed itself as follows:

“In determining the above issue, it would perhaps be appropriate to first state that tracing ownership of unregistered land is dependent on tracing the root of title. Unlike registered land where ownership is domiciled and founded in the register of titles, ownership of unregistered land and the ascertainment or confirmation thereof involves the intricate journey of wading through documentary history.....

It is the delivery of deeds or documents which assist in proving not only dominion of unregistered land but also ownership. The deeds must establish an unbroken chain that leads to a good root of title or title paramount. A good compilation of the documents or deeds relating to the property and concerning the claimant as well as any previous owners leading to the title certainly proves ownership. It is such documents which are basically ‘the essential indicia of title to unregistered land’; per Nourse LJ in *Sen v Headley* [1991] Ch 425 at 437.

The documents in my view are limitless. It could be one, they could be several. They must however establish the claimant’s beneficial interest in the property. Examples of the deed or documents include, at least in the Kenyan context: sale agreements, Plot cards, Lease agreements, allotment letters, payment receipts for outgoings, confirmations by the title paramount, notices, et al.”

80. The Plaintiff’s claim to ownership of the suit property is premised on a letter of allotment dated 22<sup>nd</sup> August, 1972, issued in her favour for Plot No. 72, Zone F, Mathare Valley. The letter, as produced by the Plaintiff, bears the name “Wanjiku Ngorigorio.” She asserts that she was using the name “Wanjiku Ngorigorio” at the time the letter of allotment was issued to her in 1972.

81. This assertion, however, is strenuously disputed by the 1<sup>st</sup> Defendant, who claims that she is the true “Wanjiku Ngorigorio”, Wanjiku being her maiden name, and Ngorigorio being a Kikuyu adaptation of her husband’s name, Gregory. Both parties agree that they did not have national identity cards in 1972. Although they were adults.

82. A fundamental issue then arises, was the suit plot allotted to the Plaintiff as “Wanjiku Ngorigorio/Ngorigorio”? The Plaintiff answers this in the affirmative and in this respect adduced a change of name deed dated 19<sup>th</sup> December, 1984, indicating that she had renounced the name “Wanjiku Ngorigorio”, a statutory declaration of identity sworn by James Kariuki dated the 20<sup>th</sup> December, 1984 and a Gazette Notice dated 18<sup>th</sup> March, 1985.

83. None of these documents establishes that as at 1972, at the time of allotment, the Plaintiff was known as “Wanjiku Ngorigorio/ Ngorigorio.” Indeed, PW1 admitted on cross-examination that not only did she have no evidence identifying her as “Wanjiku Ngorigorio/Ngorigorio” prior to or during 1972, no other individual knew her by that name at the material time.



84. The Plaintiff could not explain which documents she gave to the Interested Party identifying her as Wanjiku Ngirigorio for purposes of issuance of the letter of allotment. This is even more profound considering that her middle maiden name was not “Wanjiku” and no explanation was given why she choose the two name “Wanjiku Ngirigorio” as an alias and not any other name.
85. DW2 admitted that initially, based on the Plaintiff’s representations, property records were amended in her favour. However, when the 1<sup>st</sup> Defendant objected, the records were reverted to the name “Wanjiku Ngirigorio.” The Interested Party could only have made these changes upon being convinced that the Plaintiff had impersonated the 1<sup>st</sup> Defendant to acquire the suit property.
86. Even assuming the identity issue could be resolved in her favour, the Plaintiff’s reliance on the letter of allotment as proof of ownership is legally misconceived. A letter of allotment, by its nature, is not a title document. It constitutes an offer subject to terms and conditions, including payment of fees, acceptance of the offer within a specified period, and compliance with planning or regulatory requirements.
87. This position was affirmed by the Supreme Court in *Torino Enterprises Limited vs Attorney General* (Petition 5 (E006) of 2022) [2023] KESC 79 (KLR), where it stated:
- “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.”
88. In the present case, the Plaintiff conceded during testimony that she never made any payments for the allotment neither did she sign the allotment letter in any manner. While she stated that all the requisite documents were with her husband, these documents were never adduced into evidence.
89. The only payments she referenced were land rate receipts from the year 2012, over 35 years after the alleged allotment. Even with these receipts, it is unclear who made the payments as a majority of the receipts are in the names of “Wanjiku Ngirigorio.” This is notwithstanding the evidence by the Plaintiff that she was issued with an Identity Card using her present name, Jane Wanjuhi Kahuhu, in 1985.
90. To compound matters, the letter of allotment produced by the Plaintiff differs from the one produced by the Interested Party. While the Plaintiff’s letter of allotment is addressed to “Wanjiku Ngorigorio,” the official version held by the County Government references “Wanjiku Ngirigorio.” DW2 was categorical that two letters of allotment cannot be issued in respect to the same plot.
91. Taken as a whole, the Plaintiff has failed to discharge the evidentiary burden required to prove her entitlement to the suit property, not having shown the she was known as “Wanjiku Ngorigorio” at the material time. There was also no evidence to show that she complied with the terms of the allotment. The Plaintiff has equally failed to establish any claims of fraud as against the Defendants as alleged.
92. Considering that there was no counter claim, this court will not venture into a detailed discourse of whether the 1<sup>st</sup> Defendant has proved on the required standards that she is the legitimate owner of the land.
93. However, as indicated above, and having shown that her maiden name is “Wanjiku” and her husband’s name was “Gregory,” unlike the Plaintiff, it is probable that the 1<sup>st</sup> Defendant is the one who was known as “Wanjiku Ngirigorio,” as indicated in the letter of allotment held by the Interested Party, with the name “Ngirigorio” being a Kikuyu translation of her husband’s name “Gregory.”
94. As to whether the 1<sup>st</sup> Defendant’s claims are defeated by the doctrines of estoppel and or adverse possession, the court finds that this argument cannot stand. I say so because adverse possession arises



where a person occupies registered land openly, without the consent of the true owner, and in a manner adverse to the owner's interest.

95. In this case, the Plaintiff's own evidence demonstrates that she asserts a claim of legitimate ownership of the suit property. This is inconsistent with a claim of adverse possession.
96. On the other hand, the doctrine of estoppel cannot be invoked without clear evidence that the 1<sup>st</sup> Defendant made representations, by words or conduct, which led the Plaintiff to believe that she had an uncontested right to the property, and that she acted on that belief to her detriment. No such representations or conduct by the 1<sup>st</sup> Defendant have been demonstrated.
97. In the end, it is the finding of the court that the Plaintiff has failed to establish her case on a balance of probabilities, and the same fails.
98. For those reasons, the suit is dismissed with costs.

**DATED, SIGNED AND DELIVERED IN NAIROBI VIRTUALLY THIS 30TH DAY OF SEPTEMBER, 2025.**

**O. A. ANGOTE**

**JUDGE**

In the presence of;

Mr. Owang for Mr. Mwanzia for Interested Party

Mr. Arwa for 2<sup>nd</sup> Defendant

Mr. Kihanga for Plaintiff

Mr. Owang for 1<sup>st</sup> Defendant.

Court Assistant: Tracy

