

REPUBLIC OF KENYA
IN THE ENVIRONMENT & LAND COURT
AT KILGORIS
ELCLA E005 2025

SAMWEL KONCHORY.....

APPLICANT

VERSUS

LEKISHON OLE GEEM.....

.....RESPONDENT

JUDGMENT

1. This Appeal revolves around the allocation of plot number 45 Block 3 and Lolgorian Town Plot 595 Lolgorian Town pitting the Appellant as defendant/counter-claimer before the trial court whose case was that he was allocated Plot 45 Block 3 on 15.02.1996 by the defunct Transmara County Council against the Respondent as Plaintiff before the trial court whose case he was allocated the sit property on 5th August 2022 by the Narok County Government.
2. The trial court entered judgment for the plaintiff, the Respondent herein provoking this Appeal where the Appellant penned 21 grounds of Appeal which the court shall not set out seriatim but shall consider them alongside the submission.
3. The Appellant sought for the following orders; -
 - (i) The Appeal against the Judgment and orders of Honourable W.C Waswa SRM dated 31st January 2025 in Kilgoris CMELC Case No. E010 of 2023 be allowed.
 - (ii) The judgment and orders of Honourable W.C Waswa dated 31st January 202 in ELC Case No. E010 of 2023 be set aside in its entirety.
 - (iii) Costs of the Appeal be awarded to the Appellant.
 - (iv) Any other or further orders that the Honourable court may deem fit and just to grant.
4. Before the admission of the Appeal, the parties compromised an application dated 19.02.2025 which had sought for a stay of

execution with an order of maintenance of status quo obtaining as per the date of the site visit report dated 14.03.2025 pending hearing and determination of this Appeal.

the Appellant was to further deposit Kshs.80,000 as security for costs.

5. Directions on the Appeal were issued culminating into its admission and the same proceeding by way of written submissions which the court shall summarize hereafter.
6. The court shall now set out the respective parties cases and their submission as well as the trial court's decision before embarking on the Appeal given that I have not set out the grounds of Appeal.

Appellant's case before the trial court

7. The Appellant's case is as pleaded in his statement of defence and counter-claim appearing at page 97 of the record of Appeal.
8. It was the Appellant's case that he was allocated plot no. 595 Lolgorian Town by the Narok County council vide minutes No. 5/95, and that the Respondents could not have been allocated by the Narok County Government, as the allocation of public land is vested upon the National land commission.
9. The Appellant further pleaded that an allotment letter could not confer ownership rights as pleaded by the Respondent.
10. In the counter-claim the Appellant as the counter-claimer reiterated that he had been allocated the suit parcel by the defunct Narok County Council, and took exclusive and uninterrupted possession of the suit from the date of the letter of allotment of 15th February 1996 and developed the same after obtaining requisite permissions and approval from the authorities but the suit property was clandestinely to the Respondent, without issuance of an enforcement notice to him and re-allocation contrary to section 54 of the Physical Land Use Planning Act.
11. He sought several declaratory orders including an order that he is the lawful allottee of plot 595 Lolgorian that the reallocation of

the parcel of land was done illegal, unlawfully and contrary to the law.

Respondent's Case Before the trial court

12. It was the Respondent's case as plaintiff before the trial court as pleaded in the Plaint dated 23rd February 2023 appearing on pages 62-64 of the Record of Appeal that
 - (i) He was the allottee of parcel known as 45 Block 3/Lolgorian Town, having being allocated on 5th of August 2022.
 - (ii) That upon the said allocation he took possession of the same but the Defendant (Appellant herein) trespassed on the said parcel on 16.02.2023.
 - (iii) As a result of the said trespass he (the Respondent) had suffered loss and he sought for mesne profits evictions orders and a permanent injunction, as well general damages for Trespass.
13. In its judgment, the trial court relied on the evidence of the sub-county administrator (P.W.2) who was said to be the custodian of land documents and who testified that the Respondent was the owner of the suit parcel and based on this, the Learned Magistrate entered judgment in favour of the plaintiff (Respondent) provoking this Appeal.

Appellant's Submissions

14. The Appellant submitted on two issues for determination.
15. On issue number 1, the Appellant submitted that the Appellant was allocated plot No. 595 Lolgorian on 15.02.1996 and took possession thereof setting up a business premises, while the Respondent was allocated the same parcel in year 2022, that at the time of allotment to the Respondent the suit parcel was not available for allotment; to buttress this point the Appellant placed reliance on the decision in the case of Faraj Maharus Vs. J.B Martin Glass Industries and 3 Others.
16. The Appellant further submits that where there are two equities the first in time prevails.

17. The Appellant further places reliance on section 24 and 25 of the Land Registration Act as well as section 20 of the Rating Act, to lay emphasis on his indefeasibility of titles.
18. The Appellant further submits that he was never issued with a Notice on breach or repossession hence he is entitled to protection of the law.
19. The Appellant cited decision in the case of M'Mugwika Murogongo Vs. Settlement Fund Trustees on the proposition, that once land is alienated, the first in time prevails.
20. On costs the Appellant submits that costs follow the event and in accordance with section 27 of the Civil Procedure Act, he should be awarded costs as the appeal succeeds.

Respondent's Submissions

21. the Respondent did not frame and any submit on any specific issues for determination but submitted generally on the grounds of Appeal.
22. The Respondent submitted that the suit property plot No. 45 Block 3 Lolgorian Town belongs and is registered in the name of the Respondent.
23. The Respondent submits that the Appellant has never been the registered owner of the suit property and that the allotment letter issued to the Respondent could not be challenged without impleading the County Government of Narok.
24. The Respondent submits that Section 24 of the Land Registration Act conferred absolute proprietary interest in the registered owner of a property.
25. The Respondent submitted that the fraud pleaded by the Appellant had not been proven.
26. The Respondent submits that the Appellant property was reallocated to him when new allotment letters were issued, and the Appellant never proved that he was entitled to the suit property via the new allottee's list.

27. The Respondent submits that the trial court did not fall into any error of law or mistake and that this court opt to uphold the decision and dismiss the Appeal with costs.
28. It is undisputed fact by both the Appellant and the Respondents that their respective claims to plot No. 45 Block 3 and Plot No. 595 Lolgorian Town is pursuant to the letter of allotment that each of them holds in respect of the said plot.
29. It is also undisputed that the suit parcel has not been registered and none of the parties hold a title over the same.
30. Accordingly, the submissions by both the Appellant and Respondent on the protection accorded to a registered proprietor under section 24 of the Land Registration Act are misplaced in circumstances of the case that was before the trial court and in this appeal too, since none of the allotment letters had been perfected by registration as was held in the decision in Torino Enterprises Limited Vs. Attorney General (Petition 5 (E006 of 2022) 2023 KESC 79 KCR, which held *inter alia* **“that a letter of allotment confers no transferable interests in land, unless and until it is perfected and a title issued.”**

Issues for Determination

31. The issues for determination arising from this Appeal are as follows; -
- (i) Whether or not the appeal is merited; and in deciding this issue, the court shall also determine who between the Appellant and the Respondent is the Bonafide allottee of plot No. 45 Block 3 Lolgorianand/or plot no 595 Lolgorin town?
 - (ii) What reliefs ought to issue.
 - (iii) Who bears the costs of the Appeal?

Analysis and Determination

32. The court shall now **“reconsider the evidence, evaluate it and draw its own conclusion”** being the duties of a first

appellate court as was stated in Selle and Another Vs. Associated Motor Boats and 3 Others.

33. In his Plea before the trial court, the Respondent as Plaintiff pleaded at paragraph 3 thereof appearing at pages 62 of the Record of Appeal, that he was the registered allottee of Plot 45 Block 3 Lolgorian town having been allocated on 5th August 2022. In his evidence in chief, the Plaintiff testified as P.W.1, his testimony appearing at page 47 and cross-examination at page 48 of the record of Appeal, was to the effect that; - after allocation of the suit property, he went and found that the Appellant had erected a hotel which was still under construction. He doubted that the allotment letter held by the Appellant was genuine since planning had not taken place before issuance of the letter of allotment to the Appellant.
34. In cross-examination, the plaintiff stated that he had paid application fess of Kshs.12,000, but did not have the receipt and that planning for Lolgorian Township had taken place in 2021, he did not have the plan either. The plaintiff did not have a copy of his application, minutes of allocation, and had not paid land rates.
35. The duration of the allotment was not stated in his allotment letter, rates and rent payable were equally missing. The plaintiff did not have a copy of the PDP to show the location of the parcel and neither a report from the physical planner, to show that planning had been done.
36. In re-examination the plaintiff stated that the letter of allotment had no provision for signing in acceptance, and that the PDP had not been issued and that the Respondent was occupying the plot hence he had not paid rates.
37. The Respondent as plaintiff called The Transmara South Sub-county Administrator as P.W.2 whose testimony appears at pages 50-54 of the Record of Appeal, as evidence in chief cross-examination and re-examination.

38. P.W.2's testimony was to the effect that he was the sub-county administrator and had participated in surveying and beaconing of Lolgorian Township. He testified that the plaintiff had been issued with an allotment letter, after a replanning exercise. Few people had received allotment letters from the Late town clerk.
39. After replanning, the old allotment letters were not operational as new ones were issued by the County Government of Narok, old plot owners retained the same, new letters of allotment were issued to the bearers of the old letters of allotment. The witness stated that if the Appellant had been issued with an old allotment letter, then he would have been issued with a new allotment letter over the same parcel. He suspected the letter of allotment held by the Appellant to have been a forgery as it did not emanate from his office. On the receipt dated 08.02.2009 issued from the County Council of Transmara was also suspect, the witness said, as it did not emerge from his office.
40. In cross-examination, the witness, stated that he did have the list of the old allottees and the new allottees, thus he could not tell whether the Appellant and the Respondent were in either list. He did not have an expert report to indicate that the Appellant's letter of allotment and receipt were a forgery.
41. The witness did not have a copy of the Respondent's application letter and receipt, neither did he have minutes of the allocation committee.
42. The court shall now juxtapose the above evidence with the testimony and evidence of the Appellant as Defendant before the trial court and analyze both sets of evidence with the requirements of allocation of public land in the Repealed Government's land in respect to the Appellant's letter of allotment dated 15.02.1996 as was stated in the decision in the case of Nelson Kazungu Chai and 9 Others Vs. Pwani University College, as well in accordance with Section 12 of Land Act and the Public Land allocation Regulations 2017 made thereunder.

43. The Appellant as Defendant before trial court case as per the statement of Defence and counter-claim appearing at pages 97-103 of the Record of Appeal.
44. In his Defence and counter-claim, the Appellant as defendant before the trial court pleaded that parcel No. 45 Block 3 Lolgorian Town does not exist in the PDP of Lolgorian town approved by the defunct Narok County Council; and that under Regulation 3 of the Land (Allocation of public land) Regulations 2017, only the National Land Commission is vested with the said functions of allocating public land. the Appellant pleaded being the allottee of plot No. 595 Lolgorian having been allocated thereof on 15.02.1996, and that he had certified the conditions of allotment therein.
45. The Appellant as defendant testimony is captured at pages 57 to 59 of the Record of Appeal.
46. In a nutshell, the witness adopted his statement and produced the following documents
Copy of the part development plan for parcel No. 595 Lolgorian.
Copy of allocation minutes
Copy of letter of allotment
Copy of rent payment receipt.
47. In his witness statement, the Appellant had indicated how he was allocated the parcel, and he took occupation by building a structure, thereafter the County Government of Narok demolished the structures and replanned the town, and issued allotment letters to others.
48. The court shall now examine the process of public Land allocation under the previous regime (Government Land Act) as summarized in the case of Nelson Kazungu Chai and 9 Others Vs. Pwani University College 2014 (eKLR) as well as the process of land allocation under section 12 of Land Act and under the Public Land allocation Regulations of 2017 which are now applicable, so as to determine, between which allotment letter was in compliance with the respective process.

49. In the Nelson Kazungu Chai, the court held *inter alia*, ***“it is trite law under the Repealed Government Lands Act, a part Development Plan must be drawn and approved by the Commissioner of Lands or the Minister of Lands before any unalienated Government Land could be allocated. After a Part Development Plan (PDP) had been drawn, a letter of allotment based on the approved Part Development Plan is then issued to the allottee...”***
50. Section 12 of the Land Act as well as the Land (Allocation of Public Land Regulations) 2017, on the land vide Regulation 3, recognized 6 modes of allocation of public land and that the National Land Commission is mandated to allocate land upon the request of National or County Government.
51. The modes of allocation under section 12 are as follows; -
- (i) Public auction.
 - (ii) Allocation confined to a targeted group of persons or groups.
 - (iii) Public notice of tenders.
 - (iv) Public drawings of both public request for proposals and public land exchange of equal value.
52. Each of the above mode had a specific requirements and method of allocation.
53. Under Regulation 32, a provision is made for regularization of existing allocation in urban areas by defunct local authorities.
54. That must have been the provision relied by the County Government of Narok in respect of Lolgorian Township, whose township plots had been allocated by the defunct County Council of Transmara;
55. The requirements under this provision (Regulation 32) are that the National Land Commission would allocate the parcels; -
- (i) Upon satisfaction that land is not in categories set out in section 12(2) of the Act.
 - (ii) Approval of the Cabinet Secretary for a non-citizen.

- (iii) Require that land is planned, surveyed geo-referenced and serviced.
56. The National Land Commission is then to issue letters of allotment in the prescribed form LA 5 which contains Land premium, Annual rent, as well as the terms and conditions of allocation.
57. The Respondent's letter of allotment is said to have been issued in 2022, and must be deemed to have been issued under the provisions of Section 12(1)(e) of Land Act; and Regulation 32 as P.W.2 indicated that the allotment in Lolgorian was pursuant to a replanning of the township.
58. This said statutory provision and the regulation thereunder grants the powers of allocation to the National Land Commission. The County Government of Narok could not allocate the parcel of land as no notice of intention to allocate under section 14 of Land Act was produced before court, it follows that the Respondent's letter of allotment (P.Exhibit 1) having been issued by the County Government of Narok is unlawful. Consequently, the allocation exercise allegedly undertaken by Narok County Government is a nullity as it failed short of the substantive and procedural requirements set out under the law, and the resultant letter of allotment issued to the Respondent is equally a nullity, it ought to have been issued by the National Land Commission, and is not in the prescribed form LA5, in any event.
59. The Appellant demonstrated by exhibiting the PDP, letter of allotment, minutes of allocation and receipt of payment thereof, that there was substantial compliance with the requirements of allocation in the previous regime of Government Lands Act as held in the Nelson Kazungu case.
60. The court thus finds that the allocation to the Appellant was in conformity with the Repealed law and the plot become alienated through the first allocation and was not available for reallocation to any other person in accordance with Regulation 32(2) of the Public Land Allocation Regulation 2017, and as was held in the decision in

the case of M'Mugwika (suing as administrator of the Estate of the Late Mupiwa M'Rugonga Vs. Settlement Fund Trustee where the court quoted the decision in Mkinara M. Rinkanya and Another Vs. Gilbert M'bjawe (1982-1988) where the court held, ***“that where there was double allocation, the first in time will prevail..”***

61. Further the letter of allotment of the Respondent having emanated from the County Government of Narok as opposed to the National Land Commission in accordance with Section 12 of Land Act and Regulation 32(4) and not being in conformity with form LA5 is thus a nullity.
62. It follows therefrom that the Appellant is the Bonafide allottee of plot No. 595 Lolgorian; while the allotment of the Respondent on plot No. 45 Block 3 Lolgorian being a nullity is thus null and void.
63. Having found that the Appellant is the Bonafide allottee of plot No. 595 Lolgorian, and the court having directed a site visit before the confirmation of the status quo orders as observed at paragraph 4 of this judgment, whereat it was confirmed that the Appellant was in occupation and possession of the suit parcel, the court is convinced that by virtue of the allocation and occupation to him the Appellant is the Bonafide allottee of Plot No. 595 Lolgorian Town; and by virtue of the site visit report dated 14.03.2025, Plot No. 595 Lolgorian Town and Plot 45 Block 3 Lolgorian Town is the same parcel contested by the parties herein; at least on the ground.
64. The upshot is that the Appellant's Appeal is merited and the court finds he is the Bonafide allottee of plot No. 595 Lolgorian having been allocated regularly, and procedurally based on the evidence before the trial court and being first in time as evidenced by his occupation. The learned Trial Magistrate thus erred in law and in fact in placing reliance to the testimony of Pw 2 and considering the law on allocation of Public Land and his judgment ought not to stand.

Disposition

65. The Appeal is hereby allowed in terms that; -

- (i) The judgment of the trial court is hereby set aside in its entirety.
- (ii) The court finds that the Appellant is the Bonafide allottee of plot No. 595 Lolgorian Town.
- (iii) The Appellant shall have costs of the Appeal, costs of the suit and counter-claim in any event.

Dated at Kilgoris this 16th day of October, 2025.

Hon. M.N Mwanyale
Judge

In the presence of

C/A Emmanuel/ Sylvia/ Sandra
Ms. Bosibori for the Appellant
Ms. Mireri for the Respondent