



REPUBLIC OF KENYA



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**Koring'ura & another v Simatwa (Environment and Land Appeal
E012 of 2024) [2025] KEELC 7055 (KLR) (15 October 2025) (Judgment)**

Neutral citation: [2025] KEELC 7055 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT AND LAND APPEAL E012 OF 2024**

CK NZILI, J

OCTOBER 15, 2025

BETWEEN

JULIUS CHEMIKENEYI KORING'URA 1ST APPELLANT

ABRAHAM LIPAPUS 2ND APPELLANT

AND

SAMUEL KIBOI SIMATWA RESPONDENT

*(An Appeal from the Judgment delivered by Hon. S.N. Makila
(PM) on 29/05/2024 in Kitale MCELC No. E073 of 2021)*

JUDGMENT

1. The appellants, who were the plaintiffs at the lower court, had, through a plaint dated 18/2/2020, sued the respondent, as the defendant, claiming:
 - a. Declaration that Title No. Trans Nzoia/Zea/12 and 13 (the suit parcels), refer to Zea Settlement Scheme Plot Nos. 5 and 6 belonging to them.
 - b. Declaration that the respondent acquired the aforesaid titles illegally, nullification of the same, and issuance of titles in their names
 - c. Permanent injunction restraining the respondent from entering, dealing, leasing, charging, carrying out any operations, and or interfering with their interest in the aforesaid titles.
2. It was the appellant's case that they were the initial owners of plots No. 6 and 5, Zea Settlement Scheme, measuring approximately 5 acres. The appellants averred that plot No. 6 was purchased for the initial allottee of the land from the Agricultural Development Corporation, David Wepoghe Kalianyng, on 15/11/2002, whereas the 2nd appellant's plot No. 5 was allocated to him by the Agricultural



- Development Corporation, on 11/9/1996, whereof, they took vacant possession from the dates of sale and allocation, and have been carrying out extensive farming thereon.
3. The appellants averred that on 19/2/2020, the 1st appellant was served with a demand notice to vacate and hand over vacant possession of the two plots to the respondent or face legal consequences.
 4. The appellants averred that upon causing a search at the Land Registry Kitale, it was discovered that their plots had been illegally registered as Trans Nzoia/Zea/12 and 13 in the names of the respondent, despite earlier allocation and occupation by them.
 5. The respondent opposed the suit through an amended defence and counterclaim dated 12/10/2020. He denied the alleged existence or sale and or allocation of plot Nos. 6 and 5 Zea Settlement Scheme in 1996, as alleged or at all, or their alleged occupation on account of such sale or allocation by the appellants.
 6. Further, the respondent denied that plots Nos. 6 and 5, Agricultural Development Corporation Kapsitwet Farm, or Zea Settlement Scheme, resulted in or were similar to title No. Trans Nzoia/Zea/12 and 13 as alleged or at all. The respondent denied any alleged illegality in acquiring titles for Trans Nzoia/Zea/12 and 13, or in any way interfering with the appellants' alleged plot Nos. 6 and 5.
 7. The respondent insisted that the appellants had an interest in title Nos. Trans Nzoia/Zea/12 and 13, otherwise it was the appellants who were interfering with his ownership rights over the subject matter of the suit.
 8. By way of a counterclaim, the respondent averred that he was the lawful owner of the land comprised in title No. Trans Nzoia/Zea/12 and 13, which he bought for value on 3/8/2018 and 31/8/2018, from Hannington Wanyama Nalwali and Reuben Adekhela Muyia, who, as the original owners/allottees who successfully transferred them to him and were issued with the title deeds.
 9. The respondent averred that in 2019, his attempts to enter, cultivate, and use the parcels of land were thwarted by the appellants, yet they had no colour of right over the suit land, hence he is entitled to vacant possession. The respondent counterclaimed for:
 - a. Declaration that he is the lawful owner of Title Nos. Trans Nzoia/Zea/12 and 13.
 - b. Eviction of the appellants from the land.
 - c. Permanent injunction.
 10. In a reply to the defence and defence to the counterclaim dated 28/1/2020, the appellants termed the same as inept, incompetent, ambiguous, and defective.
 11. At the trial, Julius Chemkeneyi Koring'ura testified as PW1. He relied on a witness statement dated 18/3/2020 as his evidence-in-chief. He told the court that he purchased plot No. 6 Zea Settlement Scheme measuring 5 acres from David Wephoghe Kaliyang vide sale agreement dated 15/11/2002, who was the original allottee of the land on 11/9/1996 from the ADC. Similarly, PW1 said that he was also aware that the 2nd appellant owned as an allottee from the Agricultural Development Corporation on 11/9/1996, plot No. 5.
 12. PW1 said that he has been in possession and utilizing plot No. 6 since 15/11/2002, without interference from anyone, as well as plot No. 5, with the person of the 2nd appellant, until 19/2/2020, when he received a demand letter to vacate and hand over possession of the land to the respondent or else face consequences.



13. PW1 termed the registration and issuance of titles for Trans Nzoia/Zea/12 and 13 in favour of the respondent on 27/6/2019, illegal and subject to cancellation.
14. PW1 produced a copy of his ID, allotment letter dated 11/9/1996, demand letter dated 19/2/2020, ground report dated 26/2/2020, copy of search and photographs as P. Exhibits. No. 1, 2, 3, 4, PMFI-5, 6, and PMF-7.
15. PW1 said that he has been on the land for 23 years, occupying also plot Nos. 12 and 13. PW1 said that he had no documents to show that plot Nos. 5 and 6 were the same as title No. Trans Nzoia/Zea/12 and 13. PW1 said that he was aware that one had to be allocated good land, and if accepted, to pay some fees in respect of the letter of offer, which had to be accepted.
16. Regarding the letter of offer to David Kalianyng, PW1 was unable to explain the difference between the names ADC Kaptiret Farm plot No. 6 and Agricultural Development Corporation Kapsitwet and whether the same were similar or referred to plot No. 6 in Zea Settlement Scheme. PW1 admitted that he was not shown any receipt for Kshs. 10,000/= paid to Kapsitwet Farm.
17. PW1 termed the respondent's documents as unauthentic. PW1 denied receiving any demand for outstanding debt with respect to his plot No. 6. PW1 noted that plot Nos. 5, 6, 12, and 13 were the same thing. PW1 denied receiving letters from the Zea Settlement Scheme while they were processing titles for the plots in favour of the respondent.
18. Abraham Lipapus testified as PW2. He relied on a witness statement dated 18/3/2020 as his evidence-in-chief.
19. According to him, he was lawfully allocated plot No. 5 by ADC through an allotment letter dated 11/9/1996, while the 1st appellant bought plot No. 6 from the original allottee on 15/11/2002 and has been extensively farming on the two plots since 2002 until 19/2/2020, when the respondent served them with a demand letter.
20. PW2 termed the respondent's title as illegally obtained since he was already in occupation of the plot for over 26 years. PW2 said that he had applied for the plot at Kapsitwet farm as per the allotment letter through the Zea Member Parliament.
21. PW2 said Agricultural Development Corporation Kapsitwet and the Zea Settlement Scheme were in two different areas. PW2 said that he did not pay Kshs. 10,000/= as required on the allotment letter. According to PW2, the allotment of the Agricultural Development Corporation Kapitwet Farm is the one that was changed to Zea Settlement Scheme plot No. 12.
22. PW2 said that after the allocation, the plot was shown to him by the Estate Manager Agricultural Development Corporation, and that throughout his occupation for 26 years, nobody told him that he was occupying land which did not belong to him. PW2 said that the allocation of the plot to Hannington Nalwali on 9/11/2017 was while he was still on the land.
23. Kenneth Analo Nyaberi, a Land Surveyor, testified as PW3. He told the court that on 16/6/2020, he was directed to go and prepare a ground report of Zea Settlement Scheme plot Nos. 12 and 13, and on 25/2/2020, he visited the land, prepared and signed the report for plots Nos. 12 and 13 belonging to the appellants.
24. He produced the report as P. Exhibit No. 6 and photographs as P. Exhibit No. 7(a), (b), (c), and (d). PW3 said that the two plots were on the Zea Settlement Scheme belonging to the Settlement Fund Trustees. PW3 said that he knew nothing about Kapsitwet Farm.



25. Samuel Kiboi Simatwa testified as DW1. He relied on a witness statement dated 12/10/2020 as his evidence in chief. DW1 told the court that he was the registered owner of title Nos. Trans Nzoia/ Zea/12 and 13, which he bought on 3/6/2018 and 31/6/2018 from the original allottees for plot Nos. 12 and 13, belonging to Reuben Adekheka Muyia and Hannington Wanyama Nalwae.
26. DW1 produced the copy of the title deed, sale agreement, allotment letter, transfers dated 1/6/2018, as D. Exhibit. No. 1(a), (b), 2(a), and (b). DMFI-3(a) and (b), DMFI-4, 5 and 6(a) and (b). DW1 said that the sellers had discharged a charge in their names after paying all dues on the letter of allotment before they transferred the land to him. He produced the receipts dated 5/11/2018, 6/4/2018, and 5/11/2018 as DMFI Nos. 7, 8, and 9.
27. DW2 said that when purchasing the land, he had visited the plots over five times; otherwise, he later sent demand letters to the appellant, following which the chief visited the land and directed all of them to go to court.
28. DW1 said that he was later served with a court order by the appellants, who have no genuine claim on the plots. DW1 asked the court to grant the relief sought in his counterclaim. DW1 said that he did not consult the appellants while buying the plots, even though they claimed to have been on the land since 2019.
29. DW1 said that the maize on the plots, when he bought the plots, belonged to the sellers. DW1 said that he conducted due diligence at the land office before purchasing the plots, which showed the sellers as the true owners.
30. Reuben Adekheka Muyia testified as DW2. He relied on a witness statement dated 12/10/2020 as his evidence in chief. His testimony was that he sold the plot No. 12 Zea Settlement Scheme, to DW1 by a sale agreement dated 3/6/2018, which he had been allocated in 2017 by the government. He produced the allotment letter as D. Exhibit No. 3(a), and the transfer forms as D. Exhibit No. 3 and 6(b).
31. DW2 said that he was allocated a valid plot, which he later sold to the respondent; otherwise, he had paid all the dues as per the allotment letter.
32. He produced the receipts dated 5/11/2018 for Kshs. 25,155/= and Kshs. 16,000/= dated 16/4/2018, as D. Exhibit. Nos 7 and 8. DW2 said that his plot was No. 13, which he never utilized. He could not tell who cleared the plot.
33. Hannington Wanyama Nalwani testified as DW3. He told the court that he applied for and was allocated plot No. 12 at Zea Settlement Scheme as per the allotment letter dated 9/12/2017, to which he paid Kshs. 16,000/= on 16/4/2018, and obtained a title deed, which he later transferred to the respondent following an agreement dated 31/8/2018, being by D. Exhibit No. 2(b), 3(a) and (b).
34. DW3 said that he could not verify if the 2nd appellant was a trespasser; she had occupied his land for 27 years. DW3 said that the land initially belonged to the Zea Settlement Scheme, and he bought the same while vacant.
35. Chrisentia Atieno testified as DW4. As a County Land Adjudication and Settlement Officer, Trans Nzoia, DW4 told the court that the plot Nos. 12 and 13 Zea Settlement Scheme measuring 2.4 Ha were offered to DW3 and 2, who paid for the plots in full and were discharged in 2019 as per the receipts dated 9/11/2017, 28/3/2018, 16/4/2018, and discharge of charge and transfer documents dated 22/5/2019.



36. DW4 said that plots Nos. 5 and 6, Kapsitwet Farm, were different from the Zea Settlement Scheme, which belongs to the Agricultural Development Corporation. She could not tell who owned Kapsitwet.
37. DW4 confirmed the authenticity of D. Exhibit No. 1(a) and (b), 2, 3, 4, and 5, 7(a) and (b), 8(a), (b), and (c). DW4 said that before allocating the plots in 2017, a visit was made to the ground, and there was no one utilizing the land. DW4 said that the process of acquisition of land in the Settlement Fund Trustees starts with the Director of Settlement Fund Trustees acquiring the land, a physical planner planning the land, and a surveyor surveying the land.
38. DW4 said that a committee known as the District Prior Selection Committee is formed, whose chair is the DCC appointed by the area MP. DW4 said that the committee is assisted by people appointed in a public baraza where the land is situated. DW4 said that people would then apply for the land to the committee, which could go through the list and forward it to the Cabinet Secretary through the Principal Secretary.
39. DW4 said that the Director of Land Adjudication and Settlement, based on the list, would then peruse the list and issue offer letters valid for 90 days, during which an offeree would pay 10% of the value of the land as per the offer letter or by an outright purchase. DW4 said that upon clearance of full payment, a discharge of charge is issued to the allottee.
40. In this case, DW4 said that DW3 and DW2 fully complied with the above procedure, were to take possession, build a structure, pay for the land, fence it, and use it agriculturally. DW4 said that if the appellant had been on the ground, they could have been found there in 2017. DW4 said that the appellant never showed them any documents of offer over the subject land; otherwise, they would have sent them demand letters for the outstanding dues.
41. After the close of the defence, the trial court rendered its judgment, now appealed against through a memorandum of appeal dated 5/6/2024, listing 14 grounds of appeal. The trial court erred in law and fact for failing to consider:-
 - a. Crucial evidence of PW1 and PW2 that the suit parcels comprised the Trans Nzoia Settlement Scheme were originally Agricultural Development Corporation Kapsitwet Farm plot numbers 5 and 6 respectively, before Trans Nzoia Settlement Scheme purchased the Scheme, and the parcels were issued new numbers.
 - b. The corroborated testimony of PW1, PW2, and PW3 that the suit parcels refer to Agricultural Development Corporation Kapsitwet Farm plot numbers 5 and 6 owned by the appellants and are similar.
 - c. The 1st appellant bought plot number 6, which is now title number 13, in 2002 from the original allottee whom he has enjoyed quiet possession to date.
 - d. The 2nd appellant was allocated land plot number 5, now L.R. No. 12 in 1996 by the Agricultural Development Corporation, where he has been to date.
 - e. Title deeds to the suit parcels are not different and distinct from plot numbers 5 and 6 by the appellants.
 - f. If the plot numbers 5 and 6 are different from the land title deeds 12 and 13, why then has the respondent never taken possession of the land titles to the suit parcels.



- g. If the suit parcels were vacant at the time DW2 and DW3, who sold to the respondent, had never taken possession to date, and instead, the respondent attempted to take possession of the plot numbers 5 and 6 but was restrained by a court ruling on 24/9/2024.
 - h. The respondent did not produce any evidence that DW2 and DW3 were in possession and occupation of the suit parcels when they sold the parcels to the respondent who did not adduce any evidence on the time of the alleged trespass and taking possession of the suit parcels.
 - i. The respondents' pleadings show that upon the purchase of the suit parcels, the respondents attempted to take possession thereof of plot numbers between 2018 and 2019, whereupon the appellant filed an application for temporary injunction and obtained the orders in a ruling dated 24/9/2024.
 - j. dismissed the appellant's suit and allowed the respondents' counterclaim based on Sections 24(a) and 26 of the *Land Registration Act*, and ignored that the respondents' title deeds were under challenge and therefore the respondents had the burden to demonstrate that the title deeds were legally and regularly obtained, which burden the respondent failed to discharge.
 - k. Arrived at a decision that the respondents had proved their case against the appellants and allowed the respondents' counterclaim without any supportive evidence adduced by the respondents.
 - l. Ignored the fact that the issue between the appellants and the respondent was on possession of the suit land originally allocated to the 2nd appellant and a third party, who subsequently sold to the 1st appellant, and re-allocation of the suit parcels to third parties who sold to the respondent.
 - m. Failed to evaluate, analyse, and consider the pleadings and testimonies of all the witnesses, thereby arriving at an erroneous decision contrary to law.
42. The appeal was directed to be canvassed by way of written submissions due by 30/9/2025. The appellant relies on written submissions dated 29/9/2025. Reliance is placed on Arthur Matere Otieno -vs- Dorina Matsanza [2003] eKLR, M'Musikwa M'Rugongo -vs- Settlement Fund Trustees & Another [2022] eKLR, M'ikiara M'rinkanya & Another -vs- Gilbert Kabeere M'Mbijiwe [2007] KECA 115 (KLR), Benja Properties Ltd -vs- Syden Mohamed [2012] eKLR, Solomon Omwenya Omoche & Another -vs- Zachary O. Ayieko & Others [2016] eKLR, National Land Commision -vs- Afrison Export Import Ltd & Others [2019] eKLR, Daudi Kiptugen -vs- Commissioner of Lands & Others [2015] eKLR.
43. The role of an appellate court of the first instance is to review the evidence adduced at the lower court, satisfy itself that the decision was well-founded, while bearing in mind that the trial court saw and heard the witnesses testify. See *Selle & Another -vs- Associated Motors Boat Co. Ltd & Others* [1968] EA 123.
44. The court has carefully gone through the record of appeal, the grounds of appeal, the written submissions, and the law. It is trite law that parties are bound by their pleadings, and issues for the court's determination flow from the pleadings. A cause of action refers to acts on the part of the defendant giving cause to the plaintiff to complain. The cause of action by the appellants is captured in paragraphs 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12 of the plaint dated 18/3/2020. It was the appellants' case that they were bona fide purchasers and allottees of plot Nos. 6 and 5 Zea Settlement Scheme in 2002 and 11/9/1996, which plots, unfortunately, were illegally transferred and registered in favour



- of the respondent on 27/6/2019, and title deeds were issued despite their long occupation, use, and developments over the same. They urged the trial court to find the titles illegal and due for cancellation.
45. The respondent's case was that the two plots, Nos. 6 and 5, were not part of or did not become title No. Trans Nzoia/Zea/12 and 13, and that he was a bona fide purchaser for value without notice, hence the appellants were trespassers to his land.
 46. It is a trite law that when a title is under challenge, it is not enough to waive the instrument of title. A party, as held in *Munyu Maina -vs- Hiram Gathiha Maina* [2013] KECA 94 [KLR] (10th December 2013) (Judgment), shows that his title, which is an end result, was obtained formally, regularly, and in a procedural manner.
 47. In *Sehmi & Another -vs- Tarabana & Co. Ltd & Others* [2025] KESE 21 [KLR] (11th April 2025) (Judgment), the court said that the burden of proof lies on he who claims to be a bona fide purchaser to prove three ingredients, namely innocence, purchase for value, and a legal estate. The court said that an original allottee of a leasehold estate over public property could not strictly speaking be regarded as a purchaser of the land and that any person purchasing the land would take it subject to the rights of a third-party beneficiary.
 48. The court further said that the doctrine of innocent purchaser for value without notice did not protect a purchaser of an illegally or irregularly allocated title to public land.
 49. In *Dina Management Ltd -vs- County Government of Mombasa & Others* [2023] KESC 30 [KLR], the court observed that where the root title in a property is successfully challenged, a party cannot benefit from the doctrine of a bona fide purchaser if the property in the first instance was unlawfully acquired.
 50. In *Torino Enterprises Ltd -vs- Attorney General* [2023] KESC 79 [KLR], the court held that an innocent purchaser for value denotes a purchaser who exercised due diligence, including inspecting the property. The court said that a letter of allotment is merely an offer and not a guarantee of ownership or a transferable title, and that an allotment letter is perfected by fulfilling the terms and conditions therein, followed by registration under the relevant law. An allottee cannot pass a good or valid title to a third party until he acquires title to the land through registration.
 51. In *General & Another -vs- Hussein & Others Civil Appeal 100 Eldoret No. 32 of 2018* [2025] KECA 1022 [KLR] (5th June 2025) (Judgment), the court cited *Presbyterian Foundation -vs- Kibera Savage Self Help Group Nursery School* [2025] eKLR, that a good root of title must show its origin, must have a recognizable description of the property, and it must not contain anything that casts any doubt on the title.
 52. In *Said -vs- Shume & Others* [2024] KECA 866 [KLR] (26th July 2024) (Judgment), the court said that land is not like vegetables but a valuable item where buyers are expected to make thorough investigations over both the owner and the property before the purchase.
 53. In *Mwinyihaji -vs- Mwebeyu & Another Civil Appeal E075 of 2022* [2025] KECA 868 [KLR] (23rd May 2025) (Judgment), the court said that an allotment letter becomes operative only after its terms and conditions are complied with. The court cited *Dr. Joseph N.K. Ngok -vs- Justice Meijjo ole Keiuwa & Others Civil Appeal No. 60 of 1997*, that a letter of allotment is an invitation to treat, which constitutes no contract between the offeree and offeror, to confer interest in land, or to be used to defeat a title of a person who is a registered proprietor of the said parcel of land.



54. In *Torino Enterprises Ltd -vs- Attorney General* (supra), the court was emphatic that it is the act of registration that confers a transferable title to the registered proprietor and not the possession of an allotment letter.
55. Applying the foregoing case law to the instant appeal, the appellants' basis of ownership is an allotment letter dated 11/9/1996 and a sale agreement dated 15/11/2002 from the initial allottee. Other than the sale agreement, allotment letters, and a ground report, the appellants did not produce anything to show compliance with the terms and conditions of the allotment letters dated 11/9/1996 by one David Wepoghe Laianyang and Abraham Limapus during the lifetime of the letter of allotment set on its face.
56. There was no evidence tendered to show that the seller had perfected the letter of offer by at the very least complying with its conditions and terms, to the extent of obtaining a discharge of the charge. Equally, there is no evidence to show that the seller had obtained a transferable title to pass to the 1st appellant. Equally, there is no evidence that the 2nd appellant, as of 2019, had perfected the letter of allotment by not only complying with its terms and conditions, but also regularizing his account with the allocating authority. See *James Kiprono Tinego -vs- Peter Khisa Musungu*, Eldoret HC Civil Suit No. 161 of 1998.
57. In *Bonde -vs- County Land Adjudication & Settlement Officer, Trans Nzoia*, Petition No. E001 of 2023 [2025] KEELC 3045 [KLR] (2nd April 2025) (Judgment), the court cited *France International Ltd -vs- Kenya Anti-Corruption Commission & Others* [2024] KECA 714 [KLR] (21st June 2024) (Judgment), that a transfer of an allotment letter did not transfer any registrable interest. The court said that since the initial allottee had not perfected the charge by fulfilling its terms and conditions thereon before he sold or passed on, he had nothing capable of passing to the deceased.
58. The court further cited *Botwa Farm Co. Ltd -vs- Settlement Fund Trustees & Another* [2019] eKLR and *John Kamunya & Another -vs- John Nginyi Muchiri & Others* [2015] eKLR, on the proposition that a land sale agreement between the seller and the purchaser, where the former had not completed paying a mortgage with the Settlement Fund Trustees, had no contractual import effect.
59. In this appeal, the 1st appellant bought land from an offeree who had not accepted the allotment letter. The sale and transfer based on an allotment letter was not regularized or endorsed by the allocating authority, such that the 1st appellant's name was put in the area list and a fresh offer letter or discharge was prepared under his name. Equally, there is no evidence that the appellants were known to officials of DW4. DW4 was clear that the appellants were strangers on the land and had not even lodged a complaint with them regarding any reallocation or repossession of the land while they were still in occupation. In the absence of such evidence, the presence of the appellants on the suit parcels of land remained illegal, and therefore could not enjoy any protection of the law.
60. A court of law cannot sanction an illegality. He who comes to equity must do equity. Equity follows the law. Permanent orders of injunction, which the appellants were seeking, as well as a declaratory order of ownership, are equitable in nature.
61. As held in *Five Forty Aviation Ltd -vs- Erwan Lanoe* [2019] eKLR, the court cannot be used to enforce an obligation arising out of an illegal contract or transaction. The appellants were obligated to follow Section 167 of the repealed Agriculture Act. The appellants are faulting the trial court for not evaluating the evidence before it and arriving at the wrong conclusion.
62. The burden of proof was on the appellants to prove all elements of their claim, starting with whether plot Nos. 6 and 5 Kapsitwet Farm were distinct from the Zea Settlement Scheme. Further, apart from PW1, PW2, and PW3, the appellants did not call any of the persons who allocated them the



plots or produce any credible evidence to show that the allocating authority was the Zea Settlement Scheme. Payments made to Zea Settlement Scheme were not availed before the trial court to sustain the appellants' averments that Plot Nos. 6 and 5 were issued from Zea Settlement Scheme. Payments of the requisite fees and standard premium to the Zea Settlement Scheme were not produced in court. Evidence from the offices of the Agriculture Development Corporation was not summoned or made available to sustain the appellants' claim.

63. A lot of what the appellants have captured in the written submission dated 29/9/2025 was not tendered as evidence. Written submissions cannot replace evidence or amount to pleadings. See *Daniel Toroitich Arap Moi -vs- Mwangi Stephen Muriithi & another* [2014] KECA 642 (KLR).
64. It is the appellants who had pleaded illegality on the manner in which the respondent acquired his title deeds. The respondent called oral and documentary evidence tracing the root of his title. All the paper trails that he had availed had no break in the chain of acquisition. The process of acquiring the titles was formally regular and procedural. Fraud or illegality cannot be inferred. It has to be substantiated through tangible and cogent evidence on a higher threshold than in an ordinary balance of probabilities. See *Arthi Highway Developers Limited -vs- West End Butchery Limited & 6 Others* (2015), *Kagina -vs- Kagina* [2016] eKLR and *Wamangoli -vs- Wamangoli* [2025] KEELC 5533 [KLR] (2nd July 2025) (Judgment).
65. There was no pleading of an alleged re-possession and or re-allocation of the appellants' suit parcels of land. Apart from the allotment letters, the appellants did not call any other evidence to show the source of their allotment letters, compliance with their terms by paying the requisite fees, issuance of receipts upon payment, and subsequently charge issued and discharge of charge by the Agricultural Development Corporation.
66. Impeachment of title must be based on evidence of fraud, illegality, and issuance through a corrupt scheme. Apart from alleging that a police report was made, the appellants failed to bring a forensic examiner's report to show that the paper trail used by the respondent to acquire title was illegal, forged, and fraudulently obtained. Without tangible and credible evidence, the trial court cannot be faulted for not invalidating or canceling the titles held by the respondent.
67. The appellants further did not call or sue the offices that allocated, registered, and issued title deeds to the respondent. The respondent was not the maker of the paper trail leading to the title deeds. The respondent cannot, without basis, be found liable for costs of commission or omission by both the allocating authority and the assurers of the title deeds.
68. Evidence that the respondent was complicit and illegally acquired the transfer and registration of his titles to the suit land irregularly was merely alleged but not substantiated to the required standards.
69. The defence to the counterclaim did not plead the issues of repossession, reallocation, and re-issuance of fresh letters of allotment while the appellants were in possession. Needless to say, there is evidence that none of the appellants made the payments of KShs. 10,000/=, as required in the letter of allotment, to found a basis of claiming that they were lawful allottees of the land.
70. Once the 90-day period expired, the appellants were on the land as trespassers, as defined under Section 3(3) of the *Trespass Act*.
71. My finding is that the appeal lacks merit. The trial court was right in dismissing the appellants' suit and allowing the counterclaim. The appeal is dismissed with costs.

Orders accordingly.



**JUDGMENT DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT
AT KITALE ON THIS 15TH DAY OF OCTOBER 2025.**

In the presence of:

Court Assistant - Dennis

Mr. Kimani for Applicant - present

Kadja for the Respondent - present

HON. C.K. NZILI

JUDGE, ELC KITALE.

