

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NYERI**

**ELC CASE NO. 158 OF 2013**

**JUSTUS WAMBUGU.....**

**.....PLAINTIFF**

**-VERSUS-**

**KIMANI MUCHIRI.....**

**.....DEFENDANT**

**JUDGMENT**

1. Before the court is a suit filed by way of Plaint dated 6<sup>TH</sup> August 2013, in which the Plaintiff averred that he was the allottee of UNS RESD. PLOT NO.174 GATITU TRADING CENTRE INFORMAL SETTLEMENT SCHEME (NYERI MUN.) measuring 0.28 Ha through letter of allotment dated 30<sup>th</sup> August 2007.
2. The Plaintiff's claim against the Defendant is that he has unlawfully and illegally encroached/trespassed onto the Plaintiff's land, thereby denying the Plaintiff his proprietary rights over the suit property.
3. The Plaintiff seeks for the following orders:

**a)An order that the Defendant does vacate and/or grant vacant possession of land UNS RESD. PLOT NO.174 GATITU TRADING CENTRE INFORMAL**

**SETTLEMENT SCHEME (NYERI MUN.), failure to which the court does issue an order of eviction of the Defendant from the suit land.**

**b) Costs of the suit**

**The Defendant's statement of defence**

4. The Defendant filed a statement of Defence dated 3<sup>rd</sup> September 2013, in which he admitted that the Plaintiff was granted a letter of allotment, but denied that he had fulfilled or met the terms and conditions therein.
5. Further, the Defendant averred that the subject parcel of land falls under Aguthi/Gatutu/1726, which is registered in the name of the County Council of Nyeri as trust land, held for the benefit of the residents of Gatitu.
6. According to the Defendant, sometime in 2004, the trustee of the land decided to allot parcels to the occupants in an attempt to deal with the squatter's problem, but the process was hijacked by fraudsters and that the Plaintiff was fraudulently allotted the parcel of land which the Defendant occupies. The Defendant prayed that the suit be dismissed and the letter of allotment be revoked and proper beneficiary be issued with the same.

## Evidence at the trial

7. The hearing began on the 26<sup>th</sup> of October 2015, where **PW 1**, the Plaintiff adopted his witness statement dated 6<sup>th</sup> August 2013 as well as his documents as evidence before the Court. In his witness statement, the Plaintiff had reiterated the contents of his Plaintiff, that the Defendant has encroached onto his parcel of land and has failed to heed his demands to vacate the suit property.
8. He stated before the court that according to the list of the area and map, the Defendant has been allotted Plot. No.143 as per the list, which he cultivates and sought the court's assistance to help him evict the Defendant and return him to his plot.
9. During cross-examination, the Plaintiff stated that he knows the Defendant as they come from the same area and that he lives near his plot. He stated that he did not know the criteria that the government used to issue plots to the residents but he was aware that each was allotted a plot where they resided. That his plot is a commercial plot.
10. He further stated that he has taken this matter to the chief and even the County Council and has written to the Defendant to vacate but he has declined to do so. He was not aware whether survey has yet to be undertaken on the plots.

11. On re-examination, the Plaintiff stated that at the time of allotment, his plot was undeveloped and that Plot No.174 and Plot.143 are 500 meters apart.
12. Having been unable to obtain a witness to testify on the County's records, counsel for the Plaintiff closed his case and defence hearing proceeded on 18<sup>th</sup> July 2018.
13. **DW 1 Kimani Muchemi Mbaganya**, the Defendant herein, adopted his witness statement dated 3<sup>rd</sup> September 2013 as his evidence in chief as well as his bundle of documents filed on 6<sup>th</sup> September 2013. Therein, he had stated that he resides where his parents used to reside, in the land belonging to the County Council of Nyeri, which decided to start a process of surveying the land to settle the squatters who lived thereon. The said process was hijacked and politicized.
14. The Defendant noticed that he was to be moved from the parcel he has always occupied to Plot. No.143, which had been earmarked for community cattle dip and the Plaintiff was allotted his plot no.174.
15. After going up in arms, the process was halted and has never been resolved. The Defendant stated that the Plaintiff has never lived in the trust land and should not be a beneficiary and that he only targeted his plot since it is extensively developed and is next to the tarmac.

16. On cross-examination, DW 1 stated that he is registered as a plot owner and has not picked his title deed as there is another person who has been allocated some portion of his land by the name George Maina Njoroge, He was also not aware that the Plaintiff had been issued with a title deed
17. Referring to the map annexed on his letter of allotment Defence exhibit no.5, the Defendant stated that he occupies Plot 143.
18. Counsel for the Plaintiff opted not to file written submissions.

### **Defendant's submissions**

19. Counsel for the Defendant submitted that in the course of survey of trust land belonging to the County Council of Nyeri, which was earmarked for allocation that the Plaintiff found out the land he was fraudulently allocated was occupied by the Defendant. That in a bid to sanitize this fraudulent allocation, the Plaintiff has abused the process of this court by instituting these proceedings.
20. The Defendant submits that the Plaintiff has never lived in the area and should never have been allotted any plot to begin with and acquired the suit property through fraud and misrepresentation.

21. It was noted that title deeds have already been issued to the genuine allottees and submitted that the Plaintiff's case is unmerited and sought for the same to be dismissed with the necessary appropriate orders with costs to the Defendant.

### **ANALYSIS AND DETERMINATION**

22. The Plaintiff's claim in this suit he is the allottee of the suit property, UNS RESD. PLOT NO.174 GATITU TRADING CENTRE INFORMAL SETTLEMENT SCHEME (NYERI MUN.), vide letter of allotment dated 30<sup>th</sup> August 2007. He claimed that the Defendant has trespassed onto the suit land and prayed to be handed vacant possession of the suit land. The Defendant on the other hand claims that the said land was fraudulently allotted to the Plaintiff and that he has been residing on the suit property, where his father also resided.

23. The procedure for validating a Letter of Allotment was elaborately broken down by the Cheron J. in the case of **Ali Mohamed Dagane (Granted Power of Attorney by Abdullahi Muhumed Dagane, suing on behalf of the Estate of Mohamed Haji Dagane) v Hakar Abshir & 3 others [2021] eKLR**

*"An allotment letter has been held not to be capable of conferring an interest in land, being nothing more than*

an offer, awaiting the fulfilment of the conditions stipulated therein by the offeree. See the decisions in: **Gladys Wanjiru Ngacha v Teresa Chepsaat & 4 others 182/1992 (Nyeri)**; and in **Dr. Joseph N.K. Arap Ng'ok v Justice Moiyo Ole Keiyua & 4 others C.A.60/1997** where the Court of Appeal held as follows:

***“It has been held severally that a letter of allotment per se is nothing but invitation to treat. It does not constitute a contract between the offerer and the offeree and does not confer interest in land at all. It cannot thus be used to defeat a title of a person who is the registered proprietor of the said parcel of land.”***

In order for an allotment letter to become operative, the allottee was required to comply with the conditions set out therein including the payment of stand premium and ground rent within the prescribed period. See the decision in: **Mbau Saw Mills Ltd v Attorney General for and on behalf of the Commissioner of Lands) & 2 others [2014] eKLR**

***“I have considered the evidence on record and the submission of the parties and do find that a letter of allotment was issued to Mr. Joseph K. Mugambi on 21/10/1971 with a condition to accept the offer within 30 days. He did not do so and thereafter the offer lapsed 30 days after it was made in accordance with the allotment letter. Having failed to accept the offer as stipulated in the letter of allotment Mr. J.K. Mugambi did not acquire interest in the unsurveyed lorry depot and therefore had no interest to transfer to the Plaintiff. This court holds that a letter of allotment does not confer any property rights to a person unless there is acceptance and payment of the stand premium and ground rent. In the letter dated 17/6/1988 which was written about 17 years after the allotment letter was issued, the Commissioner of Lands confirmed that the plot was allocated to Joseph M. Mugambi in 1971 for lorry depot. However, the plot had neither been paid for nor an acceptance of the offer in the allotment letter made. The implication of this letter was that the***

***allottee had not complied with the terms of the allotment letter and therefore the offer had lapsed. The offer having lapsed, the allottee Mr. Joseph M. Mugambi did not have any interest to transfer to the Plaintiff and therefore all transactions between the allottee and the Plaintiff were a nullity in law.”***

The allotment letter also must have attached to it a part development plan (PDP). ***See the decision in African Line Transport Co. Ltd Vs The Hon .AG, 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.”***

And again, in ***Nelson Kazungu Chai & 9 Others vs. Pwani University College (2014) eKLR***

***“Worth noting as well is that no Part Development Plan was produced to back the Appellants’ claim that due process had been followed as alleged.”***

The seventh step, which comes after the allottee has complied with the conditions set out in the allotment letter is the cadastral survey, its authentication and approval by the Director of Surveys and the issuance of a beacon certificate. The survey process precipitates the issuance of land reference numbers and finally the issuance of a certificate of lease. **Nelson Kazungu Chai & 9 Others vs. Pwani University College (2014) eKLR** the court held as follows:

***‘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 survey was confirmed by the Surveyor, PW3.’***

The process was also reinstated in the case of **African Line Transport Co. Ltd Vs The Hon .AG, Mombasa HCCC No.276 of 2013** where Njagi J held as 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.”**

24. The Court ultimately concluded that:

**“Having evaluated in detail the necessary steps to be followed, it is emergent that a litigant basing their interest in land on the foundation of an allotment letter must provide the following proof: First, the allotment letter from the Commissioner of Lands; Secondly, and attached to the allotment letter, a part development plan; Thirdly, proof that they complied with the conditions set out in the allotment letter, primarily that the stand premium and ground rent were paid, within the specified timeline. It would also help a litigant’s case, although this may not be mandatory based on the stage of the transaction, to have a certified beacon certificate.”**

25. The Plaintiff did not exhibit any other documents to prove that he

had met the special conditions required by the letter of allotment, such as payment of the requisite fees vide a receipt. It has been held time and again as in the authority of **Ali Mohamed Dagane(Supra) case** above that a letter of allotment alone does not confer ownership. Thus the Court cannot uphold the Plaintiff as proprietor of the suit land on the strength of his letter of allotment alone without proof of the necessary steps having been taken from payment of stand premium and ground rent and any other necessary fees up to acquisition of the certificate of lease.

26. The Defendant was allotted UNS RESD. PLOT NO.143 GATITU TRADING CENTRE INFORMAL SETTLEMENT SCHEME(NYERI MUN.) through letter of allotment also dated 30<sup>th</sup> August 2007. He exhibited a letter from Gatitu village members to the Commissioner of lands dated 21<sup>st</sup> September 2007, raising issue that some of the members have been allocated unknown plots, including the Defendant herein who was allotted plot 143 when he lived on 174 as well as several other letters to the Commissioner of Lands, the Provincial Commissioner, the District Commissioner and the District Officer.

27. It is unfortunate that a representative from the County Government of Nyeri was not present to be a witness in this

case, as the County is the custodian of all the documents regarding land that it has allotted to individuals. In the case of **Miriam Mbeke Nyamasyo & 2 others v Dishon Odhiambo & 6 others [2021] eKLR** , Munyao Sila J held as follows:

***“I am surprised that in its Defence, the 7th Defendant pleaded that it does not recognize the Plaintiffs yet it is the very 7th Defendant or its predecessor, who issued allotment letters to the Plaintiffs. The defence of the 7th Defendant was in the circumstances malicious. The Plaintiffs have availed letters of complaints of encroachment to the 7th Defendant but the 7th Defendant has not taken any steps to stop the developments that the 1st - 6th Defendants or other occupants of the Scheme are undertaking without approval. The 7th Defendant’s conduct must be chastised.”***

28. In the circumstances, with the scanty evidence that is on record, this Court is unable to hold in favour of the Plaintiff’s proprietorship, which has not been proved on a balance of probabilities. From the record of proceedings, it appears that Certificates of title have already been issued, which none of

the parties saw fit to exhibit as further evidence. The case therefore stands dismissed, with no order as to costs.

**Delivered virtually at Nyandarua this 1st Day of October  
2025**

**HON. KAMAU MUGO  
JUDGE**

In the presence of:

C/A Samson

Mr. Kibicho H/B for Mr. Muhoho for the Plaintiff.

N/A/ for the Defendant.