



REPUBLIC OF KENYA



**Nyoka v Lonza & another (Environment & Land Case
E036 of 2021) [2025] KEMC 56 (KLR) (4 April 2025) (Judgment)**

Neutral citation: [2025] KEMC 56 (KLR)

**REPUBLIC OF KENYA
IN THE KITUI LAW COURTS
ENVIRONMENT & LAND CASE E036 OF 2021**

D MBURU, CM

APRIL 4, 2025

BETWEEN

DOMINIC MUSYOKA NYOKA PLAINTIFF

AND

TEDDY LONZA 1ST DEFENDANT

THE COUNTY GOVERNMENT OF KITUI 2ND DEFENDANT

JUDGMENT

Introduction

1. The plaintiff moved the court vide a Plaint dated 5th April 2021 as amended on 20th September 2023 by which he sought the following reliefs:
 - a. An order of permanent injunction restraining the 1st defendant, his agents, tenants or anyone under his instruction from entering, encroaching, constructing or in any manner whatsoever dealing with the plaintiff's Plot No. Uns Resd Plot 16 Block 3 Kitui Municipality.
 - b. A declaration that Plot No. Uns Resd Plot 16 Kitui Municipality belongs to the Plaintiff, Dominic Musyoka Nyoka.
 - c. Costs of the suit and interest.
2. The 1st Defendant duly entered appearance and thereafter filed a Statement of Defense dated 17th May 2021 and subsequently amended on 9th October 2023 by which he denied the contents of the Plaint. The 1st Defendant disputed the Plaintiff's claim as pertains to ownership of Plot No. Uns Resd Plot 16 Kitui Municipality.
3. The 2nd Defendant neither entered appearance nor filed defence in spite of service. The case against the 2nd defendant therefore proceeded as an undefended case.



4. Based on the foregoing pleadings, the suit was set down for hearing. Both the plaintiff and the 1st defendant testified in support of their respective cases. There were no other witnesses. The 2nd defendant did not participate in the trial.

The Plaintiff's Case

5. At the hearing, the Plaintiff herein testified as PW1 and informed the court that he purchased the suit property on 25.9.1883 from one Newton Muithya Maluki who had been allocated the same by the Commissioner of Lands through the then County Council of Kitui vide allotment letter dated 24.2.1993.
6. It is the plaintiff's further evidence that he conducted his enquiries and due diligence before buying the plot and he was satisfied that it indeed belonged to Newton Muithya Maluki at the time. The plaintiff stated that he was surprised when the 1st defendant came and started putting up a perimeter wall around the suit property without the plaintiff's consent. The plaintiff wrote the 1st defendant, Teddy Lonza, a demand letter but he never replied prompting the plaintiff to file suit
7. The plaintiff produced and relied on the documents appearing in his list and bundle of documents date 5th April 2021. These include the demand letter, copy of allotment letter, copy of rent demand notice by the Municipal Council of Kitui, Copy of application for transfer, copy of receipt for rates payment and copy of acceptance of offer/allotment. The plaintiff further stated that upon paying for the plot, he did a transfer at the offices of the Municipal Council of Kitui and he took possession of the plot and started using it from the year 1993. It is the plaintiff's case that he had uninterrupted use of the plot until when the 1st defendant came and started constructing a perimeter wall around it.

The 1st Defendant's Case

8. In his testimony before court, the 1st defendant reiterated the averments in his statement of defence, stating that he is the registered owner of the suit property, having purchased the same from Joyce Mueni Mumo vide a sale agreement dated 22nd November 2013. He stated that he paid the full purchase price towards the purchase.
9. The 1st defendant further stated that the defunct Kitui Municipal Council allotted plot number 16 to one Joyce Mueni Mumo through a letter from the Municipal and a letter of allotment on 7th July 1999. He stated that he was in possession of the land and had been paying rates.
10. In addition, the 1st defendant further testified that he had applied for change of user from commercial to residential to which it was publicized in the Daily Nation newspaper and that it was upon change of user that the plaintiff made a complaint and an objection to the approval on the ground that he was the owner.
11. It is the 1st defendant's case that the Ministry of Lands, Infrastructure and Urban Planning heard the dispute and rendered a verdict that the property was allotted to Ms. Joyce Mueni Mumo who subsequently transferred the same to the 1st defendant. The 1st defendant further stated that the plaintiff was aware of the decision by the ministry but did not challenge the said decision, choosing to file the instant suit without disclosing the decision of the ministry.
12. at the close of the defendants' case, the court directed the parties to file written submissions which have since been filed. Having carefully considered the pleadings, the oral testimonies of the parties and their respective written submissions, the court has deduced the following as the issues for determination:
 - i. Who is the lawful owner of the suit property?



- ii. Whether the plaintiff is entitled to the injunctive orders sought.
- iii. What is the appropriate order on costs?

Who is the lawful owner of the suit property?

13. As can be seen from the pleadings and the evidence, both the plaintiff and the 1st defendant claim to own the suit property. Each of them has been paying rates to the County Government of Kitui. The 1st defendant submitted that he is the lawful owner of the suit property for the reason that Ms Joyce Mueni Mumo was informed of the allotment earlier (that is on 1st June 1992), while Newton Muithya Maluki who allegedly sold to the plaintiff was informed of the allotment on 12th June 1993. The 1st defendant cited the case of *Ali Gadafi & Another v Francis Muhia Mutungu & 2 Others* [2017] eKLR where the court stated as follows:

“In other words, where land has been allocated, the same land cannot be reallocated unless the first allocation is validly and lawfully cancelled....”

14. The 1st defendant further submitted that the ministry of lands has authoritatively confirmed that the 1st defendant is the legitimate owner of the suit property.
15. The 1st defendant further relied on the case of *Hubert L. Martin & 2 Others v Margaret J. Kamar & 5 Others*[2016] eKLR where Justice Munyao Sila stated as follows:

“31. A court when faced with a case of two or more titles over the same land has to make an investigation so that it can be discovered which of the two titles should be upheld. This investigation must start at the root of the title and follow all processes and procedures that brought forth the two titles at hand. It follows that the title that is to be upheld is that which conformed to procedure and can properly trace its root without a break in the chain. The parties to such litigation must always bear in mind that their title is under scrutiny and they need to demonstrate how they got their title starting with its root. No party should take it for granted that simply because they have a title deed or Certificate of Lease, then they have a right over the property. The other party also has a similar document and there is therefore no advantage in hinging one's case solely on the title document that they hold. Every party must show that their title has a good foundation and passed properly to the current title holder.”

16. I have carefully examined the documents produced by the parties, the court record, and the pleadings and noted that contemporaneously with the filing of the plaint; The plaintiff filed an application under certificate of urgency seeking an order of temporary injunction against the 1st defendant. In response to the application, the 1st defendant filed a replying affidavit sworn by himself on 27th April 2021. By the said affidavit, the 1st defendant explained how he had purchased the suit property on 22nd November 2013 from one Joyce Mueni Mumo. He annexed a copy of sale agreement as evidence of the said purchase. At paragraph 9 of the said affidavit, the 1st defendant deposed as follows:

“9. That I am aware that Joyce Mueni Mumo was issued with the letter of allotment of the Plot No. 16 on the 7th of July 1999. (Annexed herein and marked “TL 4” is a copy of the letter of allotment.)”



17. In the same affidavit at paragraph 13, the 1st defendant deposed as follows:
13. That I know to my knowledge that on the 7th of July 1999 I was issued with a letter of allotment of Plot No. 16 (Annexed herein and marked TL 8 is a copy of the letter of Allotment).
18. It is a fact that the 1st defendant by his replying affidavit dated 27th April 2021 introduced to the court record two separate letters of allotment, one in favour of Joyce Mueni Mumo and the other in favour of Teddy Lonza. Both bear the same date, 7th July 1999. As highlighted above, the 1st defendant also swore at paragraph 13 of the very affidavit that he had been allotted the said plot.
19. The question that begs an answer then is whether the 1st defendant was indeed allotted this plot or whether he actually purchased the same from Joyce Mueni Mumo. The 1st defendant's own affidavit and documents give contradictory accounts of how he allegedly acquired the suit property. If the 1st defendant had been allotted the suit property in the year 1999, why then did have to purchase it from Joyce Mueni in the year 2013?
20. I have noted that in his oral testimony before court, the 1st defendant abandoned the claim that he had been personally allotted the suit property and stated that he purchased it from Joyce Mueni Mumo. Even if the court were to accept this version as the true account of how the 1st defendant acquired the suit property, another problem arises; the fact that Joyce Mueni Mumo was allegedly issued an allotment letter on 7th July 1999. This was about six (6) years after Newton Muithya Maluki had received his letter of allotment and sent his acceptance of the offer to the Commissioner of Lands. Was this land then still available for allotment to Joyce Mueni Mumo? The simple answer is no!
21. The 1st defendant alleges that Joyce Mueni Mumo was on 1st July 1992 advised that she was successful in the allotting of the plot. However, the said Joyce was never issued an allotment letter until 7th July 1999. The purported communication of 1st July 1992 is not a valid allotment letter and, therefore, did not confer any proprietary rights upon Joyce Mueni Mumo.
22. The 1st defendant heavily relied on the verdict of the Ministry of Lands, Infrastructure and Urban Development which ruled that the 1st defendant is the lawful proprietor of the plot. With due respect, this decision is not binding on the court. After all, that very ministry, its officials and/or predecessor are the ones who caused the current mess through double and/or illegal allocations. It is now time for the court to clean up the said mess.
23. It is a well-established principle of law that once an allottee has complied with the terms of the letter of allotment, the land becomes unavailable for re-allocation. It is imperative to take cognizance of the decision in the case of *Republic v City Council of Nairobi & 3 Others* (2014) eKLR where it was held as follows:
- “Once allotment letter is issued and the allottee meets the conditions therein, the land in question is no longer available for allotment since a letter of allotment confers absolute right of ownership or proprietorship unless it is challenged by the allotting authority or is acquired through fraud mistake or misrepresentation or that the allotment was out rightly illegal or it was against public interest. In other words, where land has been allocated, the same land cannot be reallocated unless the first allocation is validly and lawfully cancelled.”
24. It is my considered view that the suit property having been allocated to one Newton Muithya Maluki, who duly accepted the offer by his letter to the Commissioner of Lands dated 12th June 1993, the same could not have been allocated to and in favor of Joyce Mueni Mumo or to Teddy Lonza on 7th July 1999 or at all.



25. Consequently, I do hereby find and hold that the purported letter of allotment issued to Joyce Mueni Mumo by the Municipal Council of Kitui on 7th July 1999 and on which the said Joyce Mueni Mumo relied on to sell the suit property to the 1st Defendant, was invalid, null and void. This was not a case of double allocation but one of illegal allocation in so far as the suit property was not available for allocation at the time when the Municipal Council of Kitui purported to re-allocate the same on 7th July 1999.

Whether the plaintiff is entitled to the order of injunction sought

26. In my analysis on the first issue, I have found that the suit property was lawfully allocated to Newton Muithya Maluki who subsequently sold it to the plaintiff. It follows that the plaintiff is the lawful owner of the suit property and is no doubt entitled to an order of permanent injunction in view of the intrusion by the 1st defendant.

What is the appropriate order on costs?

27. Section 27 of the *Civil Procedure Act* provides as follows: -

27 (1) Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incidental to all suits shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by whom and out of what property and to what extent such costs are to be paid, and give all the necessary directions for the purposes aforesaid; and the fact that the court has no jurisdiction to try the suit shall be no bar to the exercise of those powers;

provided that the costs of any action, cause or other matter or issue shall follow the event unless the court or judge shall for good reason otherwise direct.

28. In *Republic vs Rosemary Wairimu Munene, Ex-Parte Applicant Vs Ihururu Dairy Farmers Co-operative Society Ltd* [2014] eKLR the court held as follows:-

“The issue of costs is the discretion of the court as provided under the above section. The basic rule on attribution of costs is that costs follow the event..... It is well recognized that the principle costs follow the event is not to be used to penalize the losing party; rather it is for compensating the successful party for the trouble taken in prosecuting or defending the case.

29. The general rule is that the costs follow the event.

30. In the case of *Party of Independent Candidate of Kenya & another v Mutula Kilonzo & 2 others* [2013] eKLR, the Court stated as follows:

“It is clear from the authorities that the fundamental principle underlying the award of costs is two-fold. In the first place the award of costs is a matter in which the trial Judge is given discretion.But this is a judicial discretion and must be exercised upon grounds on which a reasonable man could come to the conclusion arrived at. In the second place the general rule that costs should be awarded to the successful party, a rule which should not be departed from without the exercise of good grounds for doing so.”

31. In our case, the defendant invaded the plaintiff's property prompting the plaintiff to file this suit. It is only fair and just that the defendant bears the plaintiff's costs.



Orders And Disposition

32. Having addressed and/or dealt with the issues outlined herein before, it is now appropriate, to render a determination over and in respect of the subject matter.
33. In the end, I do hereby grant the following orders in favour of the plaintiff and against the defendants:
 - a. An order of permanent injunction restraining the 1st defendant, his agents, tenants or anyone under his instruction from entering, encroaching, constructing or in any manner whatsoever dealing with the plaintiff's Plot No. Uns Resd Plot 16 Block 3 Kitui Municipality.
 - b. A declaration that Plot No. Uns Resd Plot 16 Kitui Municipality belongs to the Plaintiff, Dominic Musyoka Nyoka.
 - c. Costs of the suit and interest.

DAVID MBURU

CHIEF MAGISTRATE

04/04/2025

