



**Africa Inland Church Kenya (Trustees Registered) & another v Enyang
& 2 others (Environment and Land Case 46 of 2013 & 5 of 2015
(Consolidated)) [2025] KEELC 5895 (KLR) (31 July 2025) (Judgment)**

Neutral citation: [2025] KEELC 5895 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT AND LAND CASE 46 OF 2013 & 5 OF 2015 (CONSOLIDATED)
FO NYAGAKA, J
JULY 31, 2025**

BETWEEN

AFRICA INLAND CHURCH KENYA (TRUSTEES REGISTERED) .. PLAINTIFF

AND

NAOMI ENYANG 1ST DEFENDANT

AMIN ALI MOHAMED 2ND DEFENDANT

THE COUNTY GOVERNMENT OF TURKANA 3RD DEFENDANT

**AS CONSOLIDATED WITH
ENVIRONMENT AND LAND CASE 5 OF 2015**

BETWEEN

NAOMI NGAPESUR ENYANG PLAINTIFF

AND

AMIN ALI MOHAMED DEFENDANT

JUDGMENT

1. The Plaintiff commenced this suit vide a Complaint dated 19th April 2013 and amended on 11th June, 2013 and further amended on 25th July 2019 but filed on 30th July 2019. It was the Plaintiff's claim in the said Amended Complaint that it was the proprietor of A.I.C. Nakulija Academy, which was a private school registered under the Education Act. Further, the School situated in Lodwar was housed on the suit land known as Plot No. Nawoitong/Nakulija/304B which measured about 3 acres. It averred further,



- at paragraph 3A of the Amended Plaintiff, that at the time of allocation of Plot No. 304B it had fully developed Plot 304A by putting up the building that housed the Nakuluja Academy.
2. It was the Plaintiff's further averment, at paragraph 4 of the Amended Plaintiff, that it paid a sum of Kshs. 2,000,000/= to the Municipal Council of Lodwar, the predecessor of the 3rd Defendant, as a consideration for the plot. Further that it continued to pay the annual statutory levies to the 3rd Defendant.
 3. At paragraph 4A, the Plaintiff alleged further that it was shown the plot allocated to it, which was next to the existing school for the purpose of putting physical facilities to expand the fast-growing pupil population of the school. Further, at paragraph 4B of the Amended Plaintiff, that although the Plaintiff was shown the plot described by the 3rd Defendant as plot 304B, the said defendant neglected its responsibility to formally survey the plot allocated and keep out trespassers, who included the 1st and 2nd Defendant.
 4. It was the Plaintiff's claim, at paragraph 5 of the Amended Plaintiff, that it sponsored several orphaned and disadvantaged pupils at the Academy as part of the fulfilment of its spiritual mandate. It added in paragraph 6 that, without any colour of right or lawful excuse, the Defendants had trespassed onto the suit land and remained on it to the detriment of the plaintiff's mandate. Further, at paragraph 7, the Plaintiff sought a permanent injunction against the Defendants prohibiting them, their servants and or agents from remaining on or interfering with the Plaintiff's use of the suit land.
 5. The Plaintiff pleaded further at paragraph 7A that the 1st Defendant's letter of allotment was described as Plot No. 381 Kanamkemer, but she had continued to occupy illegally plot No. 304B, which was far from Kanamkemer, where plot No. 381 was situate. Further, at paragraph 7B the Plaintiff averred that the 2nd Defendant was not in picture at the commencement of the suit but only emerged in December 2014 and purported to eject the 1st Defendant who was unlawfully in occupation of plot No. 304B from it pretending that the Plot was No. 349A and 349B, a fact neither true nor correct. In addition, at paragraph 7C, the Plaintiff pleaded that the 2nd Defendant purported to unlawfully erect permanent structures on plot 304B Nakuluja, only for the Court to issue an order of status quo pending the hearing of this suit.
 6. Finally, the Plaintiff sought the following orders:
 - a. A declaration that the Plaintiff is the lawful allottee/owner of plot No. Nakuluja/ Nawaitorong/304'B'.
 - b. An order of eviction of the Defendants from the suit land.
 - c. An order directing the 3rd Defendant to formally survey plot No. 304B and put the Plaintiff in actual possession unconditionally.
 - d. A permanent injunction to restrain the Defendants herself themselves (sic), her agents, or anyone claiming through her them (sic) from trespassing or doing anything to interference (sic) with the Plaintiff's quiet enjoyment of the suit land.
 - e. Costs.
 7. 1st Defendant filed her Statement of Defence dated 30th May 2013 and amended on 20th June 2023. In the Defence, she pleaded that the AIC Nakuluja Academy was not housed on Plot No. Nawaitorong/ Nakuluja/ 304B. She added that the said plot did not exist and that the School was situate on plot No. 304A measuring less than three (3) acres. She averred that on 14/01/1997, following a successful application for allocation she made on 23/09/1992, she was allocated by the Municipal Council of



Lodwar plot No. 381 Kanamkemer. The plot was adjacent to Plot No. 304A, which belonged to the Plaintiff. Further, she embarked on major developments on it and had been in occupation from the date of allocation to the date of filing the defence.

8. The 1st Defendant alleged that the Plaintiff's documents were a forgery and a game between the Plaintiff and some dishonest employees of the municipal council of Lodwar aimed at defrauding her of her land. She pleaded further that she had not trespassed onto the plaintiff's plot and that it was the Plaintiff which was attempting to trespass onto her land. The 1st Defendant averred further that the plaintiff's claim did not tally with its documents and its claim did not raise a reasonable cause of action against her.
9. She denied the allegation that the Plaintiff bought the plot in the sum of Kenya Shillings Two Million (KShs. 2,000,000/=) only and that if it did, then it should seek a refund or another plot from Lodwar Municipal Council. She then pleaded that the Plaintiff's claim was bad in law and fatally defective. She added that she would raise a preliminary objection in due time but she admitted the jurisdiction of the Court.
10. The 2nd Defendant filed his Statement of Defence and Counterclaim dated 25th May 2015. In it, he pleaded that he denied paragraphs 3A, 4, 5, 6, 7, 7A, 7B and 7C of the Amended Plaintiff. He added that he had not trespassed onto the Plaintiff's land or acted jointly and severally with the 1st Defendant since the said Defendant had sued him in Kitale ELC No. 5 of 2015.
11. He averred that he was in occupation of plots No. 349A and 349B, Nawoitong in Lodwar, Turkana County, which he legally bought from one Henry Mwangi vide a sale agreement. He pleaded that he had no proprietary interest in plot No. 304B and added that his plots were situate in Lodwar Municipality and not in any other place. He alleged that the Plaintiff's claim was malicious, frivolous and meant to embarrass him. He prayed for its dismissal.
12. He then raised a Counterclaim against the Plaintiff. In it, he prayed that he be declared the legal owner of the Plot Nos. 349A and 349B and the Plaintiff and the 1st Defendant, be restrained from encroaching on it or interfering with his activities on the said plots.
13. The 3rd Defendant was added as a party through the orders of the Court that allowed the Plaintiff to file the Amended Plaintiff, which it did as stated above. It filed its Statement of Defence dated 12th October 2020. By it, the 3rd Defendant admitted the contents of paragraphs 3A, 4, and 4A as summarized above in the Amended Plaintiff. It denied paragraphs 5, 6, 7, 7A, 7B and 7C the Amended Plaintiff (also summarized above) and added that it had been wrongly sued as a Defendant instead of being joined as an Interested Party. It denied notice of intention to sue, having been issued. It then prayed that all the prayers in the Plaintiff be granted except relief number b(i) which the Amended Plaintiff did not contain. But it prayed for the dismissal of the Plaintiffs' suit.

Kitale ELC No. 5 of 2015

14. Regarding suit Kitale ELC No. 5 of 2015, the Plaintiff, Naomi Ngapesur Enyang, who is the 1st Defendant in this lead sued Amin Ali Mohamed, who is the 2nd Defendant herein. In her Plaintiff dated 19th January 2015, the Plaintiff alleged that she was allocated Plot No 381 Kanamkemer Lodwar Township by the then Lodwar Urban Council in 1997 following a successful application in 1992. She took immediate possession, occupation and development and had been on it for over 18 years without any interruptions from the Defendant.
15. She averred that sometime in December 2014, the Defendant laid claim over the said plot without any justification, colour of right or reasonable cause. She added that the week before filing the suit, the



- Defendant forcefully and illegally entered or trespassed onto her plot, curved part of it, fenced it and damaged properties and blocked and access road and gate to the Plaintiff's home.
16. At paragraph 7 of the Plaint, the Plaintiff alleged that efforts to stop the defendant from interfering with her quiet possession of the suit property failed to materialize and she was threatened with dire consequences. Further, the Defendant had threatened to forcefully evict her from her lawfully acquired property, yet he did not have any documents in support of the same at all. Further, the Defendant had heaped materials and items such as motor boats and a bulldozer in her compound, ready to evict her.
 17. The Plaintiff claimed further that the Defendant's actions were illegal, unjustified and without legal basis, and he was a trespasser and nuisance who should be stopped forthwith from such acts and interference. The Plaintiff should be declared the lawful owner of plot No. 381 to the exclusion of all others, and the Defendant be ordered to remove the illegal properties and fence from her land.
 18. The Plaintiff then prayed for:
 - a. A declaration that the Plaintiff is the lawful and sole legal owner of plot No. Kanamkemer 381 Lodwar Town and the Defendant be evicted therefrom forthwith at his own costs failure of which he should be lawfully and forcefully evicted.
 - b. A permanent injunction restraining the Defendant and all those claiming under him from interfering with the Plaintiff's user and quiet enjoyment of the suit property.
 - c. Costs
 - d. Any other relief this honourable court may deem fit and just to grant.
 19. The Defendant therein, now 2nd Defendant in the lead file, filed a Defence dated 16th February 2015. He denied the contents of all the Plaint. He added that the suit was a nonstarter and raised no cause of action against him. He averred that he was the legal owner of plot No. 449A and 349B situate in Nawoitong in Lodwar Town and had no legal interest in plot No. 381 at Kanamkemer. He added that he bought the said plot for value and without notice of any other claim or interest from Henry Ng'ang'a Mwangi, the original allottee. He took actual possession of the same in November 2014 and was working on it.
 20. He pleaded that the Plaintiff's documents were not authentic and lacked necessary information. Further, the Plaintiff had been sued in Kitale ELC No. 46 of 2013 over the same land. He raised a Counterclaim in which he prayed that he be declared the legal owner of the Plot No. 349A and 349B to the exclusion of the Plaintiff and any other person who may claim on them. He prayed that the suit be dismissed with costs and the Counterclaim be allowed with costs.

Plaintiff's Case

21. DAVID MORU LOKAI testified as PW1 where he testified that he was a pastor of the Plaintiff. He adopted his written witness statements dated 19th April 2013 but filed on 23/04/2013 and another one dated 20/04/2015 as his evidence in chief. His oral testimony was exactly the same as it was in the statement dated 19/04/2013, although he added some facts to it besides giving in evidence documents to support his assertions in the statement, hence the Court need not rehash it.
22. In the written witness statement dated 19th April 2013, he stated that he was the Chairman of Management of the Board of the AIC Nakuluja Academy and had been a treasurer before being appointed as such. The School started in 1997 as a nursery and was housed on plot No. 304A, which had been allocated the same in 1992. It was upgraded to a primary school in 2001. It applied for the



allocation of another plot on 14th August 2005. It was allocated the land in issue in May 2012 and paid Kshs. 2,000,000/=.

23. In the other statement, he repeated most of the contents in both the initial statement and the oral testimony he gave, hence no need to repeat it. He testified orally that AIC, Lodwar District Church Council established the Nakuluja School and he was the proprietor of the school and its sponsor. He further testified that he was the chairman of the District Church Council.
24. He testified further that he had a dispute with the 1st Defendant over plot No. 304B which was adjacent to the one where the School (AIC Nakuluja) was built being plot No. 304A. He testified that due to the growth of population of the children in the school, the Plaintiff requested more land from the Municipal Council which gave them an allotment letter dated 11th May, 2012. He produced the letter as Pexh 1.
25. He went on to testify that before being allocated the plot there was a letter given to the chairman AIC Nakuluja Academy by the Municipal confirming their application for allocation of the plot was accepted. He testified that they paid Kenya Shillings Two Million (Kshs. 2, 000, 000/=) only to the Municipal Council of Turkana. He produced the receipts as Pexh 7(a) and (b)
26. He testified that they were shown the location of the plot by a former member of the County Assembly (MCA), the Mayor of the Municipal Council and his Deputy and the Municipal Clerk. He produced the minutes of approval of the allocation dated 10th May, 2012 as Pexh 2. He testified that the plot was located in the area adjacent to the school. He added that it had timber structures on it and that the 1st Defendant had occupied the plot. He also testified that the council wrote to the 1st Defendant informing her of the allocation to the school, and she was given a notice to vacate. He produced the notice dated 11th May, 2012 as Pexh 5.
27. He further testified that the school was registered with the Ministry of Education. He produced the certificate as Pexh 8. He also produced the list of documents dated 29th November, 2021 together with copies of documents attached as Pexh 1-11. He testified that the School did not claim plot No. 381. He added that plot 304B was opposite the land the council later allocated to the school. He testified that it was directly adjacent to 381.
28. PW1 was referred to Pexh 11 about which he testified that it was a letter dated 8th March, 2015 from the Turkana County Government. He testified that it confirmed that plots 304A and 304B belonged to AIC Nakuluja, plot No. 349 belonged to Henry Ng'ang'a, plot 349 belonged to him and plot 381 belonged to the 1st Defendant. He added that the letter also confirmed that the plots were separate.
29. He testified that AIC Nakuluja School was also known as Ekidor Academy. He also testified that the 2nd Defendant never had a case with the School. He testified that upon resumption of schools in January 2014, they found a brick/stone wall around plot No. 304B. He testified that the 1st Defendant's plot had also been destroyed, and she was evicted by the 2nd Defendant. He added that the 1st Defendant had sued the 2nd Defendant and the cases were consolidated. He urged the court to direct the 3rd Defendant to survey the plot 304B and they be given their plot.
30. Upon cross-examination by Githaiga for the 1st Defendant, PW1 stated that he had produced the school's registration certificate. He confirmed that the Plaintiff sued the 1st Defendant and not the school, despite the school having a Board of Management (BOM) that could sue or be sued.
31. He further confirmed that the Plaintiff was the proprietor of the school. He, however, admitted that he had not produced any document that proved his proprietorship. He also admitted to not having produced in evidence an application for allotment or any documents that showed payment for water



- and electricity on plot 304B, not in the name of the school. He confirmed that when the Plaintiff was shown the suit land, plot 304B, as theirs by way of allocation, Naomi Enyang occupied, and that there were structures on it. He stated that the 3rd Defendant informed them that the land belonged to the Municipal Council.
32. He further stated that the 2nd Defendant had not occupied the plot when they were shown. He added that he was not a neighbor to the school. He stated that the Plaintiff had not written to the 1st Defendant to vacate after the council asked her to move. He confirmed that the 1st Defendant owned plot 381 and not 304B. He also confirmed that and that the 2nd Defendant occupied plot 304B.
 33. Upon cross-examination by Barongo for the 2nd Defendant, PW1 confirmed that the 2nd Defendant occupied plot 304B. He stated plot 381 was vacant, but that the 2nd Defendant also claimed it.
 34. He stated that the plots 304A, 304B and 381 were adjacent to each other. He added that he did not know the location of plots 349A and 349B. He confirmed that the allotment letter stated that plot 304B was in Nawoitorong, and that he knew the specific location of the school within Nawoitorong.
 35. PW1 stated that the school was established on 27th October, 2009 on plot 304 and registered it. He added that they applied for allotment early, with approval done in 14th August, 2005, when the school was not yet in existence. He stated that he could not recall the date they applied for the allotment. He also stated that the approval was done through minute no. FC/01/5/12 through a meeting held on 23rd September, 1992.
 36. He admitted that by 1992, they had not applied for the minute NOPA/1/4/92, which did not tally with the Minutes contained in Pexh 4. He also admitted that the church had trustees, but that they had not filed a trust deed. He added that the BOM ran the school's affairs, and they could sue or be sued. He further stated that the Plaintiff was the proprietor and not just a sponsor.
 37. PW1 stated that he was unaware whether the surveyor filed a report on 31st August, 2016, after having visited the ground on 27th July, 2016. He added that the Plaintiff was never invited. He admitted that he had not brought a map or sketch of the plots. He stated that it was fine if the 2nd Defendant did not claim 304A and 304B since it belongs to their school. He also stated that plot 381 did not belong to the 2nd Defendant. He added that he did not have any claim to plots 349A and 349B.
 38. Upon re-examination by Samba for the Plaintiff, he reiterated that the church was the proprietor of the school and that the Plaintiff was registered as a trust. He stated that plots 349A and 349B did not border plots 304A and 304B, and that the 2nd Defendant's plot was about 800 meters from the school in Nakuluja village, which was a sub-location of Nawoitorong. He added that he did not know of the surveyor's report that was referred to and added that he had not been invited to the visit.
 39. PW1 also stated that the difference between the 1992 and 2012 minutes was that the council always referred to the 1992 minute when one applied to the 3rd Defendant. He added that the 2012 minute was the one that gave them the actual allocation.
 40. Isaiah Lokoeli testified as PW2. He adopted his witness statement dated 19th April, 2015 as his evidence in chief. In his written witness statement which he majorly repeated in the oral testimony, he added that the meeting of 10th May 2015 was a full Council meeting of the Municipal Council of Lodwar. In it, there were two issues which included Naomi Enyang's encroachment on public land at Nawoitorong and consideration of an application, Ref. 2005, for allotment of more land to the Plaintiff to extend their school program. The meeting unanimously resolved to allocate the plot (the witness did not name the plot) to AIC Nakuluja Academy on the strength that the School was serving the interests of the public by supporting orphaned and disabled children to get an education. It was his testimony that



between 2008 and 2013, he was the area councilor of Nawoitong ward and presently the Deputy Mayor of the 3rd Defendant. He testified that he was present at a meeting on 10th May, 2012, where minutes were taken regarding the school's land allocation.

41. Prior to the meeting of 10th May 2012, the 1st Defendant was given a chance to present evidence of ownership of the plot, but she did not turn up hence, it was resolved that she vacate the plot. He was shocked that she still claimed the plot three (3) years later, yet she had never been allocated the same.
42. His further oral testimony was that as the Deputy Mayor and a member of the committee, he visited the site, adjacent to the school, where they confirmed that the land was vacant before allocation. He also testified that it was initially used by Telkom Limited for masts and boosters, and that they had left timber structures behind.
43. He testified that he found the 1st Defendant living in one of those houses which she had been sublet by a Telkom officer but not the council. He went on to testify that the council summoned her on 8th May, 2012 to attend the meeting regarding her occupation and to vacate the land. He testified that the 1st Defendant attended the first meeting where she met him in his office and sought help regarding repairs she had made to a structure. He added that they advised her to discuss reimbursement with the school and a surveyor was sent to do the work.
44. He testified that the school was helpful to the community where it assisted orphans and trained some to become teachers, which was a reason for the allocation. It was his testimony that the 2nd Defendant had not applied for the land. He added that the 2nd Defendant owned two other plots, being 400 meters from the school and another given to a mosque. He testified that the council prioritized the greater public good when allocating plots.
45. Upon cross-examination by Mbungu for the 1st Defendant, he confirmed that the 1st Defendant resided on the allocated plot. He, however, admitted that he didn't know for how long she had been there. He stated that the 1st Defendant was called to a meeting but she never attended because the council considered her a trespasser. He stated she had not developed the land at all and that she should have applied for allocation like others.
46. Upon cross-examination by Barongo, PW2 explained that while the allotment letter (Pexh 1) cited a 1992 Minute, it was a general date for Lodwar allotments, and the actual allocation to AIC Nakuluja Academy occurred in 2012. He went on to explain that the minutes (Pexh 2) did not mention plot numbers because numbers were assigned by clerks after allocation. He stated that Telkom Limited occupied the plot temporarily and were not paying the council, as they had left before the allocation. He confirmed that the council would not re-allocate a plot already given to someone. He stated that he did not mention the 2nd Defendant since there was no claim against him.
47. Upon cross-examination by Bikundo for the 3rd Defendant, he confirmed that the suit land had old structures but no private ones when allocated to the plaintiff. He stated that records at the Lands Office showed the plot belonged to the Plaintiff. He stated that the council verified that the land was vacant and allocated it to the Plaintiff. He stated that the 1st and 2nd Defendants had trespassed as the plot belonged to the council before allocation.
48. Upon re-examination, he stated that the 1st Defendant never produced any evidence that confirmed ownership. He also stated that the plot numbers were not included in the minutes since surveys were done after allocation. He confirmed that the 1992 Minute reference was standard for Lodwar Town allocations and the 2012 Minute was the one that actually allocated the land.



49. Francis Ekibong Ekurudi testified as PW3 and adopted his witness statement dated 19th April, 2013 as his evidence in chief, by which he referred himself to as Francis Erukudi.
50. In it, he stated that his work entailed keeping documents on behalf of the School affairs. He had worked in the School since 2005, but it started in or about 1997. The School was established by the African Inland Church. It started as a nursery school but was upgraded to a primary school in 2001. When it started expanding, it applied for allocation of more land vide a letter dated 14th August 2005 to the then Municipal Council of Lodwar. The application was approved in May 2012 in a full Council meeting. It started developing the school and that was when the Defendant (herein the 1st Defendant) showed up claiming the land as hers. She was given notice to keep off the land since it was allocated to the school. The School paid a sum of Kshs. 2,000,000/= as a condition for the allocation of the land. He added that the said defendant did not have any lawful excuse of trespassing onto the land described as Plot No. 304B and her conduct was frustrating the plaintiff's development agenda.
51. It was his oral testimony that he was the Principal at the AIC Nakuluja Academy a school operated by the Plaintiff. He testified that the school had enrolled about 530 students. He added that they also had a junior secondary school on the same plot. He testified that there was a serious need for more land to facilitate the school's expansion.
52. Upon cross-examination by Mbungu, PW3 confirmed that the 1st Defendant occupied one of the structures on the contested plot being 304B. He stated that the structures were left behind by Telkom Limited which had previously occupied the land. He stated that the school applied for the land and was informed to pay Kshs. 2 million for the allocation. He added that the council performed due diligence, with the school understanding that Telkom had vacated the land. He denied that the structures were built by the 1st Defendant.
53. Upon cross-examination by Barongo, he stated that the school applied for the land through the Plaintiff and that the school's Board of Management (BOM) was involved in the application. He added that the application date was quoted, in council minutes, as 14th August, 2005. He also stated that the Minutes (Pexh 2), dated 10th May, 2012, were the ones that actually granted the school the land. He added that the allotment letter (Pexh 1) cited a minute from 23rd September, 1992, but clarified that the 1992 reference was a general statement for all Lodwar Town allotment letters, as the school had not been established in 1992. He confirmed that he did not mention the 2nd Defendant in his written statement, since he was not involved. He admitted that he had not seen any Part Development Plan (PDP).
54. On cross-examination by Bikundo, PW3 stated that the school applied to the Lodwar Municipal Council for more land, which was approved. He stated that they developed the property but were prevented from continuing. He stated that the County Government had not trespassed on the property and that the council verified the land was vacant before allocation. He concluded that the Plaintiff was the lawful owner of the suit property.
55. That marked the close of the Plaintiff's case;

1st Defendant's Case

56. John Mumo Mutebi, a surveyor testified as DW1 where he produced his report dated 27th August, 2016 as 1 Dexh 1. He testified that he was a surveyor by profession, having graduated from the Kenya Institute of Survey and Mapping with a Diploma in Survey. It was his testimony that he possessed ten years of survey expertise but did not hold a license to survey. He admitted that he was not a member of any professional survey body



57. He went on to testify that his report was to be found between pages 40 and 45 of the 2nd Defendant's List of documents. He testified that the report stated that Plot No. 381 could not be verified on the ground as it had been subdivided into Plots 381A, B, and C. It could not be found on the ground but records of its allocation existed to show that it existed. He, however, added that the records showed its existence and that the true location on the ground was not as shown. He also added that its acreage could not be determined because it was far off the designated place and had not been captured.
58. He testified that No. 304B, issued to Nakuluja, could not be verified on the ground since it had been recorded as Plot No. 348. He also testified that Plot No. 304B was also claimed as Plot No. 381. He testified that technically, Plot No. 381 existed and was located next to public works. The Public Works was near the School. To him, plot 381 existed in the records but its true location on the ground was not shown. He could not tell the acreage of the plot No. 381 as it was not shown in the data available and which he used. But it was the one subdivided into Plots 381A, B and C. According to the records he used, he could not verify the ground acreage of the plot because the records showed that its location was in a far place than where he visited.
59. Upon cross-examination by Samba, he confirmed that the *Survey Act* required landowners to be invited when a surveyor visited the land. He admitted that his report did not include a notice which showed that he invited the Plaintiff. He confirmed that parties present during his visit were interviewed separately and he moved separately with them. He also confirmed that his report did not show the time he visited the AIC Nakuluja Academy.
60. 1st DW1 admitted that the head teacher never showed him Plot No. 304B, stating it was not surveyed. But he added that he indicated he was shown Plot No. 304A, which had no issues. He explained that he was only concerned with the technical part of his report. He was unaware of the content of the rest of the documents attached to it. He added that his report stated Plot 304B belonged to Pamela Mulunji based on land records, but he did not attach any extract that proved this. But he added that he wrote that the records could be extracted to show that plot 304B was for Pamela Mulunji.
61. He admitted that he had not invited the 1st and 2nd Defendant and added that the Plaintiff was also not represented. He confirmed that Plot No. 304 was not surveyed and that the survey they conducted included both physical and record checks. He also stated that the 2nd Defendant never informed them that that was the land in issue. He added that his report showed that 304 was registered in the name of Ekidor Academy.
62. Upon cross-examination by Barongo, 1 DW1 confirmed that he visited the ground as a government surveyor but working for the 3rd Defendant, accompanied by the County Physical Planner and the Town Planner David Edoket, all of whom were from the 3rd Defendant. He stated that the persons who were to visit the land and carry out the survey were supposed to be from the Ministry of Lands of the national government.
63. He stated that they knew that the contacted areas belonged to the Plaintiff and that the school was in occupation. He stated that they “verified (that) the Plots 349A and B exist on the ground and in the data base.” He added that records showed that the owner of Plots 3049A and B was Henry Nganga Mwangi. He did not know him. He could not indicate any plot belonging to Amin (the 2nd Defendant) because his records were not there. He added that Plot 304 existed in the database and on the ground, but Plot 304B could not be verified as it appeared to belong to Pamela Mulunji.
64. He stated that he never found any plot that belonged to the 2nd Defendant. He added that he saw the Part Development Plan (PDP) for the area and attached a sketch plan, noting that Plot 304 (of the



- School) had encroached upon Plots 348 and 349, as well as a road reserve. He stated that his report was competent.
65. Upon cross-examination by Bikundo, he confirmed that he had not shown the name of the teacher who provided information about Plots 304A and B, nor the date of the said information. He also confirmed his team surveyed only Plots 349A, B, 348, and 304. He admitted that he had no evidence from the lands office that showed Plot 304B was not yet surveyed, nor that it belonged to Pamela Mulunji. He admitted not showing any evidence that plot 304 existed. He stated that his report was a technical report that involved Nakulija Primary School and the 1st and 2nd Defendants.
 66. He admitted that he was not an expert in survey matters. He stated that he only extracted information but had not confirmed it from the land registry. Asked by the Court to clarify, he added that from his report, all plots 304A, 304B, 349A, 349B, and 381 existed on the ground. He added that the report did not touch on plot No. 242.
 67. Kevin Onyango Obota testified as 1st DW2 where he testified that he worked as a surveyor with the Turkana County Government. He further testified that he had 11 years of experience and was a member of the Institute of Surveyors of Kenya (ISK). He further testified that he had filed a two-page, undated report in court. He added that he had been invited to conduct the survey through the office of the Attorney General.
 68. It was his testimony that when he visited the property, various parties were present, but he could not identify them since he had also been invited. He testified that the 2nd Defendant was not present but that his advocate called him, where he gave instructions to a representative who opened the gate. He testified that his report showed that Plot No. 381 belonged to the 1st Defendant. He further testified that Henry Nganga Mwangi was not present, but his plots 349A and 349B were noted as not being in his occupation. He added that the ledger register showed that the said plots were managed by the County Council.
 69. He testified that there was a typing error in his report, where "305B" should have been "304B" in the conclusion part. He testified that he never verified or surveyed 305B, but 304B. He testified that his report showed Plot 304A as 0.5575 Ha and Plot 304B as 0.6552 Ha. He added that Plot No. 381 was registered in the 1st Defendant's name and measured 0.5729 Ha.
 70. Upon cross-examination by Samba, he stated that the said Advocate was present during the survey exercise and a number of people and other lawyers some of whom were in court. From his visit he found that the 2nd Defendant was exclusively using the fenced compound which he called on someone to open for the survey visit. He added that from his findings on the ground, plot No. 304B was in the compound occupied by the 2nd Defendant. Its size was 0.655 Ha. He also added that he found that plot No. 381 belonging to Naomi Enyang was in the same compound and it measured 0.5729 Ha. He added that the total acreage for Plots 349A and 349B was 0.5435 Ha. He added that the said two plots had been fenced by a perimeter wall and that the 2nd Defendant had occupied them in the area marked in blue on his sketch map. He added that the current school compound on plot 304A was marked red, while Plot 381 for Naomi Enyang was marked green, and Plots 349A and B were marked blue.
 71. He further stated that the five plots 304A, 304B, 381, 349A, and 349B were all in the same physical location. He added that the acreages were obtained from his ground computations using coordinates.
 72. Upon cross-examination by Barongo, he stated that there was no land registry in Turkana. The information about plot registrations was maintained in a ledger book held by the County Council in the revenue office. He stated that he found it puzzling that the three parcels of land, namely 304, 349, and 381 could be in the same location with conflicting documents. He admitted that the



documentation in support of the same was confusing. He admitted that he did not indicate the information that plot No. 304A was registered in the name of Ekidor (Academy). He also stated that he saw a Part Development Plan (PDP) registered on 11th May, 1989 which contained all the plots of the entire area, including 349A and 349B and a "Nursery School" (Nakuluja AIC). He added that plots 349A and 349B were registered in the name of Henry Ng'ang'a. He stated further that the PDP did not indicate plots 381 and 304B. He added that the document 1st DMFI 10, dated 25/05/2012, given by the 1st Defendant was a survey conducted by the District Surveyor and signed on that date. He admitted that the document did not exist in the survey records held by his office where he was working at the time of giving the testimony. He nevertheless extracted coordinates on it and he used them to locate its physical location. He marked it green.

73. He stated that he used a survey plan filed by the 1st Defendant which had coordinates (1st DMFI 10), even though he had not confirmed its existence in the survey office. He further stated that he used the said coordinates to locate the physical location of Plot 381, marking it "green". It did not agree with the extent of plots 349A and B but it covered it and stretched even beyond the two plots. He also stated that based on the PDP, he noted that the nursery school located on plot No. 304A had encroached on a road between the said plot and Plot 349B, since the road did not exist on the ground. He clarified that according to his report all plots, namely, 304A, 304B, 349A, 349B and 381, existed on the ground.
74. Upon cross-examination by Bikundo, DW2 stated that he conducted the exercise independently and followed the court's order. He admitted that there was a typographical error. He added that Plot. No. 304B existed on the ground. Further, plot 304A was adjacent to plots 304B, 381, 349A and 349B.
75. Asked by the court to confirm the facts again, he stated that when he showed a document (1st DMFI 10) to the Director, Mr. Joseph Egelon, it was confirmed to be signed by Mr. Oyoo, the then District Surveyor. He added that there was confusion in the records and it was difficult to determine the matter because the parties must have been allocated the same land twice. The same land located in the same geographical place was allocated to different parties but bearing different numbers. They were surveyed at different times and lying on the same position. He stated that when he used the same too, it again showed that the 1st Defendant's land lay elsewhere. He added that at one time the lands office of the national government in Turkana was destroyed.
76. DW2 was stood down to provide further information on the history of allocation, records of allocation and minutes from various lands and survey offices (Lodwar County, Director of Survey Nairobi, Lands Office Nairobi) for specific plot numbers (304, 304A, 304B, 381, 349A, 349B, and 242). He never got to testify again.
77. Naomi Ngapesur Enyang testified as 1st DW3 where she produced her statement dated 26th May, 2014 which was adopted as her evidence in chief. Top of Form
78. In it, she stated that before 1992, she used to reside in Kapenguria until clashes erupted and she moved to Lodwar. She rented a house. She applied for a plot in 1992 to the Lodwar Municipal Council and was told that there was no vacant one then. She was promised one where Telkom people resided. She talked with them, and they gave her a temporary structure to reside in. When they left, she went to the Council once again and it allocated her the plot which became vacant upon the departure of the Telkom staff. Her application was approved in 1997 and she started paying rates since then. One of her neighbours was Eunice Wanjala.
79. Later, the Plaintiff School was allocated Plot No. 304A and they found her in the area. She developed it extensively and lived on it peacefully until 2012 when the AIC Church laid claim over the same and she received a demand letter from M/S Ondabu & Co. Advocates that she vacate the land which she named



as 495 (but amended her statement on 25/04/2023 to read 381). Sometimes the Clerk to the Lodwar Municipal Council summoned her to the office. She attended the office and produced documents in support of her case but he said the documents were fake. She requested that her plot be surveyed and it was done by the District Surveyor.

80. When elections approached, corruption took centre stage. Those who were close to officials wanted to grab whatever they could get. The Plaintiff and officials from the Council ganged up against her to take her plot illegally. By 1992, the School had not been started. She was aware that plots were allocated to people and not sold. She added that she was the allottee of plot No. 381 and had not trespassed onto plaintiff's plot and the one referred to as plot No. 304B did not exist.
81. She testified orally that her written witness statement indicated that the plot allocated to her was No. 495 but she corrected it to read Plot No. 381, Lodwar Town. She testified that that the time she was allocated the said property, Telkom Kenya workers were already in occupation. She further testified that when she sought a plot from the municipal council, she was told about a plot temporarily occupied by Telkom Kenya Limited workers and was allowed to stay in a vacant house on the land by the Telkom team manager.
82. She testified that she applied for the allocation in 1992 and she was given an allotment letter dated 14th January, 1997. The allotment letter was marked as 1st DMFI. She added that her plot was known as Nakuluja village, within the broader Kanamkemer Ward. It was her testimony that she stopped paying rent when the 2nd Defendant removed her from the place in November/December, 2014.
83. She produced a notification letter from the municipal council marked as 1st DMFI 3 and minutes dated 23rd September, 1992 that showed the deliberations about the allocation 1st DMFI 2. She also presented receipts for land rates paid on 9th January, 2001, 16th April, 2004 as 1st DMFI 4(a) and (b)] and 10th August, 2007 as 1st DMFI 5. She testified that the receipts did not specify the plot number for which payments were made. She also produced a receipt for survey fees dated 3rd May, 2011 marked as 1st DMFI 6, a letter from the survey office dated 25th May, 2012, which referred her as the owner and provided the location/size details as 1st DMFI 7 and an original map for Plot No. 381 as 1st DMFI 8.
84. It was her testimony that she paid for utility bills (water, electricity, security) and continued to receive electricity bills for the 2nd Defendant's account on her phone even after being ejected. She also produced water meter receipts 1Dexh 13(a)-(e), additional land rates receipts 1Dexh 14(a)-(b), a police abstract dated 14th June, 2023 1Dexh 15, and Kenya Power invoices as 1Dexh 16(a)-(b).
85. She testified that she reported the destruction of her property (felling trees, being barred from access) by the 2nd Defendant to the Lodwar Police Station. She added that she filed a case against him, being ELC No. 5 of 2015, which was later consolidated with the present suit. She testified that her main issue was with the 2nd Defendant and not the school. It was her testimony that she received letters from Ondabu and Company Advocates dated 10th July, 2012 and the Municipal Council dated 23rd January, 2012 which required her to vacate the land, as it had been allocated to the Plaintiff. She explained that she engaged in negotiations with the Plaintiff, who offered her another land, which the 2nd Defendant later took possession before an agreement was reached.
86. DW1 testified that she lacked the originals of some documents because they were destroyed. She was stood down so as to get certified copies of the documents she had filed. She did not, on a later date. That marked the close of the 1st Defendant's case.



2nd Defendant's Case

87. Amin Ali Mohammed testified as 2nd DW1, where he produced his witness statements dated 16th February, 2015, and 25th May, 2015 which were adopted as his evidence in chief. He also produced his list of documents filed on 25th May, 2015, and a further list filed on 22nd May, 2024. In the Statement dated 16th February 2015, he stated that he bought the suit land, being plots No. 349 from one Henry Ng'ang'a Mwangi on 07/02/2005. It was situate in Nawoitorong in Lodwar. It was later subdivided into plots 349A and 349B. In November 2014 he took actual possession of the same. He had no interest in plot 381 in Kanamkemer.
88. On 10/02/2015, he was served with an application dated 02/02/2015 in respect of Kitale ELC No. 46 of 2013 and was surprised to see that he was sued over plot No. 304B on allegations of encroachment onto the said plot. He stated that he had no interest in plot Nos. 304A and 304B. He purchased plots No. 349A and B for value and without notice of any other persons. He had no interest in plots 381, 304A and 304B in Kanamkemer He added that the documents in respect of those plots were not genuine. Further, the Minutes in respect of plot No. 381 were a forgery.
89. In the Statement dated 25th May 2025, which he filed in the suit No ELC. No 46 of 2013, he repeated the contents of the statement he signed on 16th February 2025 almost verbatim, hence there is no need to repeat the contents. He only added that a scrutiny of the supporting documents in support of the claims he found that they were not genuine and lacked necessary information such as plot number or the minutes were made by a fictitious person. The plaintiffs' claim was fictitious, vexatious and a nonstarter.
90. He testified orally that he was the owner of Plot No. 349, which included both 349A and 349B, located in Nawaitorong estate in Lodwar Town. It was his testimony that that he purchased the same vide a series of sale agreements between himself and Henry Ng'ang'a. He testified that the first agreement was dated 7th February, 2005, for the purchase of Plot No. 349 from Henry Ng'ang'a Mwangi. He produced the sale agreement which was marked as 2Dexh 1.
91. He went on to testify that he made a second agreement on the sale of plots 34A and B for Kshs. 300,000 on 8th April, 2008. He produced the acknowledgment note from Henry Nganga as 2Dexh 2. It was his testimony that he had a copy of an allotment letter issued to Henry Ng'ang'a Mwangi by the Lodwar Municipal Council on 27th October, 2000. He added that the original was with the 3rd Defendant. He also produced replacement allotment letters for 349A and 349B, dated 9th March, 2011, as 2nd DMFI 3.
92. He produced a document known as "procedure for documentation of land ownership" by Turkana, dated 5th May, 2009, which outlined the process from planning authority to title deed issuance as 2nd DMFI 4. It was his testimony that one needed to have authority to plan and then be issued with a PDP which is advertised and then approved after which an allotment letter is issued. He added that a survey was then carried out after which a title deed is issued by the land registrar.
93. He produced receipts for plot rent, seal, plan approval and quarry, the first receipt dated 27th October, 2000, for Kshs. 13,950 as 2Dexh 5. The second receipt was dated 25th May, 2001, for Kshs. 8,000 for plot No. 349B as 2Dexh 6 and the third receipt dated 7th January, 2015 for Kshs. 3,000 produced as 2Dexh 7. He also produced a receipt dated 9th March, 2011, for Kshs. 17,500 which was for the replacement of the allotment letter as 2Dexh 8(a) and another dated 23rd October, 2009 for Kshs. 1,600 as 2Dexh 8(b).
94. He testified that the final agreement was dated 15th December, 2014, which completed the purchase with Kshs. 400,000, plus an additional Kshs. 50,000 for delayed payment. He produced the sale



- agreement as 2Dexh9. He also produced a replacement of the original allotment letter for plot 349A as 2DMFI 10, allotment letter dated 9th March, 2011 in the name of Henry Nganga as 2DMFI 11 and the PDP for plots 349A and B as 2DMFI 12.
95. He further produced a letter dated 8th March, 2015 by the 3rd Defendant to Samba & Company Advocates which stated that plots 349A and 349B belonged to Henry Nganga as 2DExh 13. The letter to the ODPP by the CEC Land and Physical Planning was marked as 2DMFI 14. He testified that he made a report to the Lodwar police station about the destruction of the fence by the school which report was marked as 2DMFI 15. He went on to testify that there was another report made by the 1st Defendant on the same destruction which was marked as 2DMFI 16.
96. He added that the police issued him with a certified copy of the OB of 1st June, 2015 and 2nd June, 2016, which were marked as 2DMFI 17 and 2DMFI 18, respectively. He testified that he had been staying on plots 349A and 349B since 1994 or 1999, initially as a tenant of Henry Mwangi, and then he bought his new house. He further testified that he performed due diligence before he purchased the land in 2005 and completed the purchase in 2014 where he received the legal documents.
97. It was his testimony that he renovated the developments on the land after he took possession. He added that the Kenya Power and Lighting Company (KPLC) electricity bills sent to his meter on plot 349B, sent to the 1st Defendant, were an error. He also testified that the 1st Defendant had encroached onto the public land. He testified that as per minute TPC/3/5/12, the Plaintiff had not been allocated the suit land.
98. Upon cross-examination by Samba, he stated that he had not seen an application for allocation by Henry Nganga. He further confirmed that from the minutes held on 7th May, 2012, the Plaintiff was allocated the land. He stated that from the minutes held on 10th May, 2012, he was also allocated the land. He added that he completed the purchase of plot number 349 in 2014. He further stated that the 1st Defendant was his caretaker on the land since 2005 and that he only allowed her to reside there as she had no job. He denied the 1st Defendant's claim that she owned Plot 381 or that he unlawfully evicted her. He added that the 1st Defendant was a tenant of Henry Mwangi and Pamela Muhonji on adjacent plots.
99. Upon cross-examination by Mbungu, he argued that the documents produced by the 1st Defendant regarding ownership were not genuine and that he did due diligence before he purchased. He stated that he first bought the land in 2005 and paid the last installment in 2015. He also stated that he was not aware that there was an ongoing case when he completed payment. He stated that the 1st Defendant's police abstract for loss of documents was reported in 2023, long after the case was filed. He referred to 2 DEXH 13 where he stated that the same summarized that plot 381 belonged to the 1st Defendant but that the location was different.
100. Upon cross-examination by Bikundo, he was referred to 2 DEXH 8 (b) where he confirmed that it belonged to Henry Mwangi. He admitted that the receipts did not bear the name of the issuer. He was also referred to 2 DEXH 9 where he confirmed that the agreement did not specify the mode of payment. He stated that he purchased plot 349(A) and (B) for Kshs. 1 million of which he paid in installments. He added that the acreage was not specified. He went on to state that the report showed that plot 304 could not be verified since the record showed that it was indicated as number 348.
101. Upon re-examination, he stated that he was only interested in plot 349 (A) and (B) by virtue of the agreement 2 DEXH 8(a) and (b). He further stated that the Plaintiff subdivided their plot to have 304 (A) and (B) so as to encroach into his land. He confirmed that he had never seen the PDP for 304. He denied having any case with the school directly and stated that the 1st Defendant sued him (ELC



- No. 5 of 2015), and that this case was consolidated with the school's suit. He stated that the school (AIC Nakuluja) encroached on his land, blocking access roads, and that their claim to Plot 304B was a "creation" to encroach on his property. He argued that the school's allotment letter minute from 1992 was a general council authorization, and the school's actual allocation in 2012 came after his plots were already acquired.
102. Charles Lorogoi Ejore testified as 2nd DW2. He adopted his witness statement dated 27th January, 2015 as his evidence in chief. In his written witness statement, he was a former councilor of the Urban Council of Lodwar from 1993 to 1997 and the Lodwar Municipal Council from 1998 to 2002 and also the first Mayor of the Municipality Council.
 103. As Chair of the Urban Council between 1993 and 1997 he never attended any meetings or received any application during his tenure from Naomi Ngapesur Enyang. He added that the minutes of September 1992 were a forgery as they purported to indicate that he chaired the meeting then. They were a forgery and needed to be investigated. It was his testimony that the 1st Defendant forged the Minutes of the County Council dated 23rd September, 1992. He also testified that he was not the Chairman in 1992, but was the Chairman of the Urban Council in 1993.
 104. He testified that the signature on the document was not his and that he never attended such a meeting. It was his testimony that the said minutes were false. He pointed out discrepancies in the names listed in the forged Minutes where he testified that "John Kaatho" should be Edward Kaatho, "John Lokaris" should be Gideon Lokaris and "Benjamin Lorogo" should be Benjamin Lorogoi Lolere. He went on to testify that the above persons listed with incorrect names were never councilors and that the correct names of councilors he worked with were in the Council records.
 105. Upon cross-examination by Samba, he confirmed that he was the Chairman of the Turkana Urban Council from 1993-1997 and later became the Lodwar Municipal Council Mayor. He stated that his witness statement was not entirely correct regarding his mayoral term, as he only served for 2.5 years, not until he finished as Mayor. He also stated that the 1st Defendant's Minutes which claimed he was Chairman in 1992 was false.
 106. Upon cross-examination by Ms. Mbungu for the 1st Defendant, he stated that he was a former councilor of Kenyatta Ward of Lodwar and a former Mayor of the Municipality. He further stated that he conducted many meetings on plot allocation as Chairman. He admitted that he could not recall if the 1st Defendant was present. He stated that he knew the 1st Defendant and he recalled a time she resided in the Kanamkemer area in a plot rented to her by a Mr. Mwangi, which he was allocated as a committee member. He admitted that he had not brought documents to prove he was Mayor but stated that council documents would have showed his role.
 107. On cross-examination by Bikundo counsel for the 3rd Defendant, he stated that the Minutes of 23rd September, 1992 was a forgery. He confirmed that he was Chairman from 1993 to 1997.
 108. Upon re-examination by Barongo, he stated that the individuals whose names he corrected (Edward Lokaris, Benjamin) were known to him, and Benjamin was deceased. He also stated that the persons with incorrect names in the contested minutes were never councilors and the correct names were those he had given.
 109. John Naitakai Echwaa testified as 2nd DW3 where his witness statement dated 27th January, 2015 was adopted as his evidence in chief. In the statement, he stated that he was a former Councilor of Nawoitorong of the Lodwar Municipal Council from 1998 to 2002 and a former Mayor of the Town.



110. He added that in the year 2000 they, as a Council allocated plots to employees of the Post and Telecommunications. These were Henry Mwangi and Pamela Murunji, who were residing in four timber houses from 1990. Pamela was allocated plot Np. 348 with one timber house and Henry Mwangi plot No. 349, which had three timber houses. The allocations were based on their long stay occupying the houses. It was his oral testimony that he served as an area councilor of Nawoitorong ward from 1998 until President Kibaki ended his rule in 2007.
111. He testified that he recalled of a meeting held during his tenure, where an application by Mr. Mwangi for a plot was considered and approved. He testified that plot number 349 was allocated to Mwangi. He further testified that he was unaware if anyone else claimed the plot afterwards. He also testified that the plot given to Mwangi had three houses, and that Mwangi resided in them. He added that plot allocation meetings were held during his tenure and he was part of the Committee that held the meetings. He added that the minutes and records of those allocations would remain in the clerk's office, as he was not the custodian of such records.
112. Upon cross-examination by Samba, he confirmed he was elected councilor in 1998 where he served for two terms. He also confirmed that he knew Mr. Mwangi was an applicant for a plot but admitted that he could not recall the specific year of allocation, only that it was during his term.
113. He confirmed that he knew Pamela Mulunji, but admitted that he did not know her specific work. He stated the plot allocated to Mwangi was in Nawoitorong. He stated that he was not a councilor in 2012 since he was engaged in his own business. He stated that Isaiah Lokoeli was a councilor after him. He was aware that the Nakuluja School was allocated a plot next to the one allocated to Mwangi's but did not have the Minutes for that allocation. He confirmed that the plot given to Mwangi had three houses, and Mwangi was residing in them.
114. Upon cross-examination by Ms. Mbungu, he stated that he was the Mayor of Lodwar Municipal Council between 1998 and 2007. He stated that the Committee meetings for allocations were held, and minutes were kept by the Clerk (to the Council). He further stated that he knew the Committee allocated Henry Mwangi plot No. 349, which had three houses where Mwangi resided. He admitted that he did not know the person who lived there before Mwangi. The Committee sent persons to the ground to investigate the occupation of the land (before allocation) and they reported that Mwangi resided in the houses. He admitted that he did not know where the 1st Defendant resided then.
115. Upon cross-examination by Bikundo, he stated there were four similar timber houses on the two plots and added that he had not seen them being built. He stated that applications for allocation were made, and Henry Mwangi's made one. He admitted that he had not brought the application to court since the records remained in the clerk's office. He stated that the Committee allocated land to workers of Posta and Telecommunications, and Mwangi had resided there for a long time. He also stated that he never knew for how long Mwangi lived there before allocation. 2nd DW3 confirmed that an allocation Committee of the Council existed; the full Council would sit and consider applications for allocation after the Finance Committee had verified if the plots were free or occupied to avoid double allocation claims.
116. Upon re-examination by Barongo, he stated that after he ceased to be a councilor, he left for his own issues. He also stated that the council would not allocate to anyone who had not applied and that investigations were done to confirm plots were free of disputes before allocation.
117. Festus Ekitela Lorogoi testified as 2nd DW4 where his witness statement dated 27th January, 2015 was adopted as his evidence in chief. In it he stated that in 2012 he was serving as the Town Clerk of the Lodwar Municipal Council. At the time, the Plaintiff (in ELC No. 5 of 2015, one Naomi



Ngapesur Enyang) presented documents for verification upon recommendation by the Town Planning Committee. When he scrutinized the documents, he found that the Minutes she used were a forgery and the letter of allotment had no official seal. Also, the payment receipts had errors and did not appear in the Plot Payments Register as per the MR Number. The signature of the Chairman was a forgery. The name John Lokeris was not the official name of Gideon Lokeris and that of Edward Kaatho was written as John Kaatho. One Grace Adiwia was not yet a Councilor at the time, by 1992: she was only nominated in 1998. One Benjamin Lorogoi was a staff of the Council and not a councilor. He was only elected in 1993 General Election. Further, no elected councilor was in the meeting that gave rise to the Minute PA/1/4/92 approved by the County Council of Turkana. Also, Mr. Nakooli Ejore was still a student at Lodwar High School and not a staff member of Lodwar Urban Council.

118. He testified that the 1st Defendant presented Minutes of the County Council dated 27th September, 1992, which he scrutinized and found to be forged. He cited several discrepancies in the names. He testified that the minutes were forged and were not true minutes of the council. He added that the 1st Defendant was not allocated any plot. He also testified that the forged minutes lacked a plot number, which was a discrepancy since council minutes typically indicated a plot number that is then entered into a register of plot owners. It was his testimony that he served as the Town Clerk of Lodwar Municipal Council in 2012. He referred to Minutes of a meeting held on 7th May, 2012, where it was indicated that the 1st Defendant had encroached on public land. He identified the land as plot number 349.
119. He went on to testify that in the same Minutes of 7th May, 2012, AIC Nakuluja's application for land adjacent to the School was discussed and approved for 100 acres in Kanamkemer Ward. He added that the Kanamkemer land for AIC Nakuluja School was different from the land Naomi had encroached upon in Nawoitorong Ward, which indicated two separate issues. He testified that after the Plaintiff applied, they gave the 1st Defendant 14 days to vacate the land she had encroached upon. He added that the said notice was captured in the minutes of 10th May, 2012. He clarified that the land given to the school (AIC Nakuluja) was not the one the 1st Defendant was asked to vacate.
120. He explained that the Council's norm was that the Town Planning Committee would first discuss land matters, and then the full Council committee ratified the approval. He testified that during the full council meeting, the 1st Defendant was given 14 days to vacate after the council realized her documents were forged and that she was not the owner of the land. He further testified that plot numbers were not indicated in the 7th and 10th May, 2012 minutes. He testified that Henry Mwangi visited his office with a complaint that the 1st Defendant had encroached on his plot (No. 349).
121. He went on to testify that after Mwangi's documents were verified, the council determined plot 349 belonged to Henry Mwangi and the 1st Defendant was then given another 14 days to vacate and hand over plot 349 to Henry Mwangi, which she did. He testified that Henry Mwangi paid all his rates in arrears. He added that the land had already been allocated to Mwangi when he visited his office, and that it had not been allocated to AIC Nakuluja at that point.
122. Upon cross-examination by Samba, he stated that he was appointed Town Clerk in 2012 and was the CEO of the council, responsible for implementing decisions and communications. He stated that the 1st Defendant vacated the land around November 2012. He denied she was still on the land in 2015. He added the land allocated to AIC Nakuluja was in Kanamkemer and different from the land the 1st Defendant occupied.
123. He also confirmed that he did the letter dated 11th May, 2012 wherein he had advised the School to demarcate the land. He added that the said land was not the disputed one. Further, Henry Mwangi



- was the registered allottee of plot 349. The disputed land had been allocated to Mwangi and not the School. He stated that he was unaware of any allotment letter for 100 acres.
124. Upon cross-examination by Ms. Mbungu, he stated that the 1st Defendant's documents were forgeries based on his scrutiny as a Municipal official. He further stated that the 1st Defendant had encroached on two pieces of land: plot 304 (which AIC Nakuluja was to occupy) and plot 349 (Mwangi's land).
 125. He confirmed that the 1st Defendant presented her documents to the preliminary meeting between 7th and 10th May, 2012, where they were found to be forged. He admitted the 1st Defendant had not occupied the disputed parcel before Mwangi, and she lived there illegally. Further, he admitted did not have copies of Identity Cards (IDs) to prove that the names in the 1st Defendant's Minutes were forged.
 126. Upon cross-examination by Bikundo, he denied having prepared a letter for 100 acres, though he admitted to having prepared one for the Kanamkemer land for AIC Nakuluja. He confirmed that AIC Nakuluja paid Kshs. 2 million and he presented an allotment letter for plot 304 to AIC Nakuluja. He stated that he had also sent a follow-up letter to AIC Nakuluja on 13th May, 2012, which indicated the approval of the plot adjacent to the School, and copied the 1st Defendant. He stated that plot numbers were not mentioned on some letters because the plots were already in existence. He further stated that the 1st Defendant resided on plot 304, which was adjacent to the school, and that this was the land the school was allocated.
 127. Upon re-examination, he stated that the council would not allocate one parcel to more than one person or entity. He also stated that the allotment letter produced by the Plaintiff (Pexh 1) indicated plot No. 304B, while the letters he wrote on 13th May, 2012 to AIC Nakuluja and the 1st Defendant did not contain plot numbers. He stated that Henry Mwangi's documents were authentic.
 128. He clarified that Plot No. 304B allocated to AIC Nakuluja was the 100 acres in Kanamkemer, and the other plot allocated to AIC Nakuluja was the original 304 in Nawoitorong. He explained that when a plot is subdivided, it is given A and B (e.g., 304A and 304B), and AIC Nakuluja originally owned 304. He concluded that the 1st Defendant encroached into two plots, leading to two separate cases, one for the school and one for Henry Mwangi.
 129. Davis Munialo the County Director Physical Planning testified as the 2nd DW5 whereby he was shown the original PDP prepared by Orinda Obuya on 11th May, 1998 and testified that it did not have the actual plot number. It was his testimony that whenever the Municipal Committee was to allocate land, it asked both the physical planner and surveyor to demarcate it first to show the size. He produced the PDP as 2D-Exhibit 12 and a copy of the procedure for land ownership as 2-Dexhibit 4.
 130. Upon cross-examination by Samba, he admitted that he had no authority from the Municipal Council asking for the preparation of the PDP. He also admitted that there was no allotment letter that related to the PDP. He confirmed that the procedure for the ownership of land as produced was not signed.
 131. Upon cross-examination by Mbungu, he admitted that he had not prepared the PDP. He also admitted that demarcation preceded allotment letters. He stated that the Plaintiff should explain why their allotment letter was given before issuance of the PDP. He was referred to the allotment letter dated 11th May, 2012 where he confirmed that it showed that the plot allocation was of 1992.
 132. He stated that he could not know if the County Council allocated one plot to two different people. He also stated that he could not tell whether there were mistakes in the register. He further stated they concluded that plot 304B could not be verified on the ground since in the record it was captured as 348.



133. Upon cross-examination by Bikundo, he stated that before the County government came into place, the allotment letters were issued by the Lodwar Municipal Council.
134. Henry Mwangi testified as 2nd DW6, where his witness statement dated 28th January, 2015 was adopted as his evidence in chief. In it, he stated that he applied for allocation of a plot in 1999. He was allocated plot No. 349 on 27/10/2000. He resided on it until 1989. In 2005 he sold it to Amin Ali Mohamed for the sum of Kshs. 1,000,000/= and he took possession thereof upon payment in full.
135. He was referred to DMFI 3 being the allotment letter issued on 27th October, 2000. He testified that it was issued following a committee meeting on 23rd September, 1992. He further testified that they were informed by the 3rd Defendant to return the allotment letters that were issued with others. He testified that the reissued allotment letter was for plots number 349A and 349B.
136. He produced the DMFI3 and originals of DMFI 11 (a) and (b) as D-exhibit 11 (a), (b) and (c). He testified that when he was given D-exhibit 11 (a) and (b), he was issued with a PDP (D-exhibit 4). He testified that after being allotted, he sold them to the 2nd Defendant and he returned the original letter. He added that he paid for the rates and that after he sold it, the plots still remained in his name. He testified that the allotment letter for AIC Nakuluja had a serial number 1112 and the plot given to it was parcel number 304B. He testified that he had no interest in the said land.
137. Upon cross-examination by Samba, he confirmed that he became the boss of Telkom (K) Ltd in 2003. He stated that the 1st Defendant occupied the house as his tenant. He applied for the allotment in 2000, but he admitted that he did not have a copy of the application. He added that the Committee allocated him the plot on 27th October, 2002. He admitted that he did not have a certified copy of the allotment letter.
138. He confirmed that the last agreement between him and the 2nd Defendant was in 2014 while the first agreement was on 2nd February, 2005. He admitted that at the time, he had not received the two allotment letters for 349A and B. He also confirmed that he did not have the PDP in court. He admitted that he had not done a transfer to the 2nd Defendant. He stated that he did not have a plan and that he could not identify the location of plots 349 A and 349B.
139. Upon cross-examination by Bikundo, he stated that he applied for allocation of the land in 1999. He was referred to the agreement D-exhibit 9 where he confirmed that it did not show the mode of payment or whether the land was sold with developments. He stated that the 2nd Defendant took possession after he made the final payment on 15th December, 2014. He admitted that there was no agreement to confirm that the 1st Defendant was his tenant.
140. Upon re-examination, he stated that he was given the PDP after the allotment letter. He stated that he paid Kshs. 13,950/= for allocation. He stated that he gave the 2nd Defendant possession after he completed the payment.

Site Visit

141. The Court visited the locus in quo and took further evidence thereat.
142. PW2 was recalled and reminded that he was on oath. He testified that he was the Area Councilor at the time of allocation. He identified the location of the plot. He testified further that the plot was free at the time and it had no brick wall separating it as it had at the time of the site visit. It was his testimony that he wrote to the 1st Defendant to vacate the public land and asked the Council to pay her Kshs. 2,000



- for renovations, which was approved. He added that he was not aware of any information regarding Henry Mwangi's allocation of the plot.
143. Upon cross-examination by Barongo, PW2 confirmed that he was shown the School boundary before allocation. He only pointed out the boundary. He admitted that the Plaintiff was allocated land near Mt. Kenya University which was not near the site. It measured 100 acres. He confirmed that next to the disputed plot the school built the classes which was 5 blocks. He stated that the houses on the disputed plot (allocated then) were temporary structures occupied by employees of Telkom Kenya. He also stated that no one had been allocated the land. PW2 stated that the area was not built on but the said houses were built when the case was still ongoing.
 144. Upon cross-examination by Bikundo, he confirmed that they (plaintiffs) were allocated public land which was in an area known as Nawaitorong and was later to be known as Kanamkemer.
 145. PW4 Jenniffer Epeyon also testified on the site. She stated she was a councilor at the time and that on 10th May, 2012, she was involved in the allocation process together with PW1. She also testified that the school applied for the land. It was her testimony that they sat as a committee and forwarded the same to the council. She testified that they found the houses occupied by Telkom Kenya and added that Henry Mwangi was not present.
 146. Upon cross-examination by Barongo, PW4 admitted that they did not use a map during allocation. She stated that they only saw that the land was vacant. She stated that the school was in two blocks. She admitted that they did not go to lands office to confirm if there was any allocation. She also stated that there were times they could find double allocation and, in such instances, the person allocated earlier would then remain on the land.
 147. Upon cross-examination by Bikundo, she stated that they did not go to the lands office since there were no offices at the time. She stated that Telkom houses were located on the left side. She added that they found the 1st Defendant and not Henry Mwangi.
 148. Upon re-examination, PW4 stated that the lands office was not present but confirmed that they had land documents.
 149. The court observed that PW4 could not tell the exact size of the land allocated.
 150. PW1 was again recalled at another part of the site, and he testified there that there was no road in between the plots at the time of allocation.
 151. Upon cross-examination by Barongo, he stated that upon allocation, there was no road but added that currently there was a road. He stated that the PDP dated 10th July, 1998 was not in existence. He further stated that the land was vacant thus public land. He also stated that Henry left the land for a while due to the post-election violence.
 152. Upon re-examination, PW1 stated that the land had a fence where Telkom employees live and later vacated. He further stated that they could not allocate public land.
 153. The 2 DW1- Amin Ali Mohammed also testified at the site. He stated that Henry Mwangi showed him the plot which had houses known as County Place. He added that there were only three structures. He added that he was shown a technical report which showed that the school had encroached on part of their place. He testified that he was allocated the 100 acres and also chaired the meeting to allocate it.
 154. Upon cross-examination by Samba, he stated that due to encroachment, he had to use the rear-view part of the house. He confirmed that he never filed a counter-claim or have any prayer for re-opening of the road.



155. Upon cross-examination by Bikundo, DW2 stated that the neighboring plots were owned by private persons. He also stated that he has been on the land since 1996. He further stated that he reported the encroachment by the school. He stated that he was the chairman and that they allocated AIC Nakuluja 100 acres in 2000.
156. On cross-examination by Barongo, he confirmed that the ledger book was government property.
157. DW5- Henry Mwangi testified that he was allocated the plot 349A and B. He further testified that his house was inside the plot.
158. Upon cross-examination by Samba, he confirmed that he had not constructed any buildings. He also confirmed that he found the houses on the land.
159. That concluded the site visit.

3rd Defendant's Case

160. Emmanuel Ekai Nabeny, upon request of substitution of the previous witness Ekai Lokoraka testified as 3rd DW1 whereby he adopted as his evidence in chief his written witness statement dated 11th November, 2024. In the witness Statement, he stated that he was the Director, Legal Services of the County Government of Turkana since September, 2023. His duties included managing and coordinating the activities of the Directorate of Legal Services, supporting legal counsel and consultants contracted to draft legislation on behalf of the County Government and representing the said County in court.
161. He added that he had been authorized to appear in Court in the instant matter. He stated that the 3rd Defendant, in a nutshell, admitted the Plaintiff's claim. He stated that the 3rd Defendant took that position on the basis of the Minutes of the predecessor of the 3rd Defendant dated 10th May 2012 by which it allocated plot No. 304B to the Plaintiff for expansion of its noble services of providing education to the Turkana community youth. He added that he had in his possession two letters dated 11/05/2012 one of which it was communicating approval of the plaintiff's application for allocation of an extra land and another requesting Naomi Enyang, the 1st Defendant, to vacate the suit land.
162. He stated further that the letter of allotment issued to AIC Nakuluja, signed by one Festus Lorogoi, was authentic and it was in respect of the plot adjacent to plot 304A that was already owned by the School, which plot was previously owned by the 1st Defendant. He added that the 1st and 2nd Defendant had never applied for Plot No. 304B. Further, the plot numbers 349, 349A and 349B were an imagination of the 2nd Defendant. Also, from their records, the Plaintiff applied for what was to be known as Plot 304B in the year 2005. It then paid the sum of Kshs. 2,000,000/= on account of land rates for the plot.
163. He summed it up that the County Government of Turkana's policy was to provide and support education and literacy for positive community growth and the AIC Nakuluja Academy was commended for its work hence the unanimous approval for the allocation by the plot allocation committee. He also produced a List of documents dated 18th November, 2024. He produced his letter of appointment as the Director Legal Service of the 3rd Defendant as D-exhibit 1.
164. He was referred to the minutes of 10th May, 2012 where he testified that the chief from minute 2 stated that the 1st Defendant had encroached onto public land. He testified that from minute 3, it was stated that the Plaintiff applied for the land that was adjacent to the school. He was referred to the letter dated 11th May, 2012 P-exhibit 2 where he testified that the same addressed land allocation that had been signed by Festus Lorogoi (2nd DW4) having been allocated to the school. He was also referred to P-



- exhibit 5 where he testified that the 1st Defendant was required to vacate public land. He testified that P-exhibit 1 allotment letter for 304B was authentic.
165. Upon cross-examination by Bikundo, he stated that he had not visited lands office in the County to confirm the documents he referred to. He stated that between 1999 and 2011, the Plaintiff had not been allocated plot no. 304B which period he the Plaintiff asserted through the receipts they produced for Kshs. 2,000,000/= to confirm payment for the allocation of the plot.
166. He stated that the Minute of P-exhibit 2 did not bear the plot number. He added that he had not seen the application by the Plaintiff. He was referred to 2nd D-exhibits 5, 6, 7 and 8 of which he stated that the receipts were for allotment letter replacement. He was referred to D-exhibit 12 (a) and (b) where he confirmed that the same were allotment letters for plot 349A and B allocated to Henry Nganga. He was referred to the PDP attached to the letter of allocation about which he stated that the same showed a nursery school adjacent to the two plots. He confirmed that the minutes P-exhibit 2 did not state which side of the school the plot was allocated.
167. Upon re-examination, he stated that from the minutes, the land allocated was adjacent to the school. When he was referred to the PDP he stated that he did not know its authenticity but confirmed that it was ok. He stated that from the records, AIC Nakuluja paid for land rates but not sure for which plot. He also stated that it made an application for allocation. He clarified to the court that he could not tell the physical locations of plot 304 and 349A and B as the registers of the owners existed in the office. The witness was stood down to produce the register, where he later produced it as 3rd Dexh 7. He testified that the register showed plots 304A and 304B were registered in the name of Ekidor (AIC Nakuluja) and 349A and 349B for Henry Ng'ang'a.
168. Upon cross-examination by Samba, he stated that the 3rd Defendant filed an admission of the Plaintiff's claim, hence confirmed that the Plaintiff was allocated the said plots.
169. Upon cross-examination by Mbungu, he stated that the register contained all the plots in issue being 304A and B and 349A and B. He stated that it did not contain plot 381.
170. Upon cross-examination by Barongo, he confirmed that the register showed Ekidor Academy (AIC). He stated that there was no AIC Nakuluja Academy. He stated that from plot 349A and B, it was under the name of Henry Mwangi while plot 304A and B had no name under it.
171. Upon re-examination, he stated that matters of acreage were usually captured in other instruments. The witness clarified to the court that plot 304 existed before creation of plot 349.
172. That marked the close of the 3rd Defendant's case.
173. 2nd DW1 was later recalled and he produced a certified copy of the allotment letter dated 27th October, 2000 as 2 Dexh 3.
174. That marked the close of the 2nd Defendant's case.

Submissions

175. Counsel for the 1st Defendant filed his submissions dated 21st February, 2025 where he identified two issues for determination. The first issue was whether Plot No. Kanamkemer /381 Lodwar Township could be verified on the ground and if so, who is the legal owner of the said Plot. While submitting in the affirmative, he based his argument on the surveyors' report. He argues that the 1st Surveyor Report dated 27th August, 2016 by the technical team indicated that Plot No.381 (which belonged to the 1st Defendant) could not be verified on the ground because the Land Registry indicated it was allocated



- to more than two individuals. He submits that the technical team could not establish how different people were allocated the same plot number.
176. He submits that with the 2nd Surveyor's Report by Mr. Kelvin Onyango Obuta confirmed that Plot No.381 was registered under the 1st Defendant's name and was physically verified on the ground. He submits that based on the findings of both surveyor reports, the 1st Defendant submits that there was a serious overlap in the allocation of the suit plots. He further submits that despite the overlap, the 1st Defendant is the legal owner of Plot No.381. He submits that the 3rd Defendant should be ordered to compensate the 1st Defendant for failing to issue an indefeasible title due to the overlap.
177. The second issue was whether there was an overlap in issuing the Letters of Allotment to different parties on the same parcel of Land. Counsel argues that the allotting authority, the 3rd Defendant, ought to have issued an indefeasible title to the 1st Defendant. He relied on Section 23 of the [Land Registration Act](#).
178. He submits that while copies of the 1st Defendant documents were produced, she confirmed that she was not in possession of the original documents because she was forcibly evicted by the 2nd Defendant. He submits that the 1st Defendant countered the 2nd Defendant's witnesses (DW1, DW2, DW3, DW4) who had alleged forgery, as they were not expert witnesses in matters of document authentication, and thus their claims of forgery should not be considered by the court without corroborating expert testimony.
179. Counsel for the 1st Defendant submits that the Plaintiff's claim for Plot No.304b Nawoitorong/nakuluja is problematic since a partial land register indicated that Plot 304 is registered in the name of Ekidor Academy, and that Plot 304B was non-existent. It was his submission that the 1st Defendant exhibited was the legal owner of Kanamkemer /381 Lodwar Township by virtue of the allotment letter and that she has been in occupation since 1997 and paid the rates as evidenced from the receipts.
180. He submits that the Plaintiff's was not the registered owner of Plot 304B Nawoitorong/nakuluja as claimed. He further submits that the Plaintiff failed to prove its case on a balance of probabilities and the suit should be dismissed with costs.
181. Counsel for the 2nd Defendant filed his supplementary submissions dated 13th February, 2025. It was his submission that the authenticity of plot allotment letters issued to Henry Ng'ang'a was not in question as was confirmed by the land register on 22nd November, 2024. He submits that Henry Ng'ang'a Mwangi was allocated Plot No's 349A and 349B on 9th March, 2011 vide minute No. PA/1/4/92. He submits that the 3rd Defendant never denied having allocated the two portions of land to Henry Ng'ang'a Mwangi.
182. He further submits that Mr. Henry Ng'ang'a Mwangi was allocated Plot No's 349A and 349B and obtained a PDP from the commissioner for land and in the process of obtaining titles, the Plaintiff filed this suit in 2013 thus unable to complete the process. He submits that the issue of sale transaction between Henry Ng'ang'a Mwangi and the 2nd Defendant was not a subject of determination as the same was not contested. He went on to submit that the Plaintiff never tendered any document to demonstrate that Plot No. 304B existed on the ground. He adds that no survey report nor part development plan was tendered. In conclusion, he submits that the Plaintiff failed to prove its case on a balance of probabilities. He urges the court to dismiss the suit with costs.
183. Counsel for the 3rd Defendant filed his submissions dated 11th March, 2025, where he identified two issues for determination. The first issue was who was the lawful allottee of plot adjacent to plot 304A. It is his submission that the court visited the property and confirmed the suit plot was adjacent to the



- Plaintiff's school. He further submits that the 3rd Defendant acknowledged that the 2nd Defendant and Plaintiff were contending over the same plot but with different numbers. He submits that this aligned with findings from surveyor reports that confirmed a serious overlap in the allocation of the suit plots and that Plot 304B and Plot 381 (claimed by the 1st Defendant) were lying on the same location.
184. It is his further submission that the 3rd Defendant admitted the Plaintiff's claim which confirmed that the allotment letter for plot 304B issued to A.I.C Nakuluja (the Plaintiff) was authentic and related to a plot adjacent to 304A, which was already owned by the Plaintiff. He argues that the Plaintiff provided credible evidence of applying for, deliberating on, approving, and receiving an allotment letter for Plot 304B after it made the requisite payments. He submits that the Plaintiff proved its case on a balance of probability to be the lawful allottee of plot No. 304B/Nakuluja/nawaitorong which was adjacent to the school. He argues further that the 2nd Defendant lacked the capacity to sue as it is trite law that a letter of allotment is not a title deed that is transferable.
185. He further submits that the 2nd Defendant failed to demonstrate his root of title as he did not have an allotment letter. He adds that his agreement was tainted with irregularities and uncertainties. He also submits that proper processes for the allocation of unalienated Government Land must be followed. He argues that it was not enough for a party to state that they have a lease or title to the property without proper allocation. He cited the case in *Dina Management Limited V County Government of Mombasa & 5 others* (Petition 8 (E010) of 2021) [2023] KESC 30 (KLR) (Constitutional and Human Rights) (21 April 2023) (Judgment). He submits that the register confirmed that plot 304A and B preceded plot 349A and B, thus the Plaintiff's registration took precedence over the allotment to Henry Mwangi. He relied on the case of *Bank of Am. N.A 3:16 CV-00116-RCJ-VPC* (D. Nev. May 23, 2017).
186. The second issue for determination was on what orders were to issue. He submits that the Plaintiff is entitled to the prayers they have sought in the amended plaint.

Analysis and Determination

187. The law on proof in evidence is that he who alleges proves. It is trite that, except where the law specifically removes the burden and places it on another, he who alleges ought to prove the allegation. Section 107 (1) of the *Evidence Act* provides that:
- “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.”
188. Therefore, in *Anne Wambui Ndiritu vs Joseph Kiprono Ropkoi & Another* [2005] 1 EA 334, the Court of Appeal held that:-
- “As a general proposition under Section 107 (1) of the *Evidence Act*, Cap 80, the legal burden of proof lies upon the party who invokes the aid of the law and substantially asserts the affirmative of the issue. There is however the evidential burden that is case upon any party the burden of proving any particular fact which he desires the court to believe in its existence which is captured in Sections 109 and 112 of the Act.”
189. This Court having considered the pleadings, the law, the evidence and the parties' written submissions and their issues, I am of the opinion that the main issue for determination in this matter is who the lawful allottee of the plot adjacent to plot 304A, referred to as plot 304B, which is occupied by the 2nd Defendant is. The second one is whether or not there was double allocation over the said plot. This is whether the suit by the plaintiff was time-barred. Fourth is whether the 2nd Defendant's Counterclaim in both this suit and No. 5 of 2015 is merited.



190. Lastly, the question is who to bear the costs of the suit.

Who is the lawful allottee of Plot No. 304B Nawoitorong, referred to also as 349A and 349B?

191. This Court started by pointing out that the evidence of the 1st DW2 confusion.

192. The Plaintiff's case is fundamentally built on the claim that the Municipal Council allocated plot 304B to their School, Nakuluja Academy. It claims the plot to be adjacent to the School which is located on plot 304A. The said plot is also claimed by the 1st Defendant, but she says it was allocated to her as plot No. 381, while it is also claimed by the 2nd Defendant who says it was allocated to one Henry Mwangi as plot. No. 349A and 349B who later sold it to him.

193. On the part of the Plaintiff, PW1, Mr. Lokai a pastor of AIC and chairman of the Lodwar District Church Council, stated that the Plaintiff established Nakuluja school and that he was its proprietor. He testified that the Plaintiff had requested more land from the Municipal council for school expansion, which request was approved vide an allotment letter dated 11th May, 2012 (Pexh 1).

194. It was the Plaintiff's case that they paid Kshs. 2 million to the Municipal Council of Turkana for the plot, which was evidenced by receipts produced as Pexh 7(a) and (b). He also produced Minutes of approval dated 10th May, 2012 (Pexh 2) together with the school's registration certificate (Pexh 8) and a letter from the Turkana County Government dated 8th March, 2015 (Pexh 11) which stated that plots 304A and 304B belonged to AIC Nakuluja, while plot 381 belonged to the 1st Defendant.

195. Isaiah Lokoeli, PW2, a former Deputy Mayor, confirmed that the 1st Defendant resided on the allocated plot, which they claimed was public land initially used by Telkom Limited and then left to the council. It was their case that the 1st and 2nd Defendants had trespassed on their plot. The 2nd Defendant argued that plots 304A and 304B were a creation by the Plaintiff to facilitate encroachment onto their land. He contends that the original plot 304 was later subdivided by the Plaintiff so as to advance its claim.

196. It is important to understand the whole issue herein turns on the fulcrum of the enduring Latin phrase, "Cuius est solum, eius est usque ad coelum et ad inferos" which means that whoever owns the soil owns up to the sky and down to the depths. Its modern Common Law interpretation is that whoever owns land has rights to the immediate airspace which is over their property but it does not necessarily extend to the upper stratum of airspace or outer space (which is public space that extends to the international airspace), and in like manner he does not own the ground below beyond a certain level, and may not own certain subsurface resources like minerals, which ordinarily belong to the state or other persons. This is in line with Kenya's constitutional provision of Article. In essence, this Court is stating that land, which is refined further to encompass sectional property, does not exist in a vacuum. It is not merely a number or reference to some abstract item, or just a piece of paper, Kenya's former President Moi one time referred it to (a sad history there). Land must flow from and be part of a specific piece of earth that a proprietor owns to the extent that the law defines its certain limitations. Thus, the unfortunate occurrence of double or triple allocation of the same piece of earth or terrestrial place to more than one but different owners at the same time cannot comport with both nature and the law. Thus, where the 3rd Defendant in this case or its defunct predecessor, the Municipal Council of Lodwar purports or purported to allocate the same piece of earth to three different persons, the Plaintiff and the 1st and 2nd Defendants at the same time is not legally tenable. It could only be one at a time, unless they or either of them could be joint owners or tenants in common, which is not the case herein.

197. The starting point of consideration is a confirmation of the Plaintiff's establishment of its claim of allocation of the plot in issue. For a party to be allocated a plot by the Council, under the law regime of the time, they were required to follow certain steps. The first one is to apply for the allocation, the next



- one is to receive the allocation and accept the offer (in writing). The third one is to comply with the conditions of the allocation. The next one is to process the title documents to perfect the allocation.
198. I have keenly examined the evidence of the Plaintiff. The Plaintiff did not produce any letter of application for allocation. It also did not produce any acceptance of the allocation if any. What the Plaintiff produced were receipts of payment, which it indicated through the testimony of PW1 and PW2 and 4 that it was the owner of the plot though payment of the land rates, and a letter of allotment purportedly issued in 2012.
 199. I have carefully analyzed the two receipts of Kshs. 1 million each produced by the Plaintiff. A deeper examination of the receipt shows that it is not in dispute that the same were not specific on the plot number for which the payment was made. Both the evidence of PW1 and the two documents seem to speak to something different. The receipts show that they were made for the same purpose, being payment by the AIC Nakuluja Academy on 10th May 2012, for rates for the years 1999 to 2012. First of all, if the receipts are for the said plot No. 304B, they do not indicate so. Even then, assuming that they were for the said plot, it beat logic as to how and why an entity that allocated land in 2012 can pay for land rates for on the same plot that it was not allocated by the time, that is to say, from 1999 to 2012. It would mean either that the Plaintiff was corruptly trying to obtain land allocated to someone else in 1999 but had not paid the land rates, or the land was allocated for the first time to the said party in 1999 and not in 2012. These two documents speak volumes regarding the irregularities in the process of acquisition of plot No. 304B claimed by the Plaintiff.
 200. Further, the Plaintiff's allotment letter (Pexh 1) referred to a 1992 Minute, yet according to PW2 the school was registered in 2009, but it was started in or about 1997 as a nursery school. The actual approval Minutes cited (Pexh 2) were of 2012.
 201. It is noteworthy that from the evidence adduced, all Lodwar allotment letters referred to the 1992 Minute which was when the Board of the Municipal Council first sat and decided to make allocations of land.
 202. This court was curious to understand whether the sum of Kshs. two million (Kshs. 2,000,000/=) would elicit the payment of rates or ownership allocation fees for such a small piece of land. I have discussed in detail this aspect when I considered the receipts in paragraph 333 above.
 203. In my view, the receipts were in respect of an earlier allocation whose rates had not been paid. They tend to lend credence to the evidence of 2nd DW4 that the said AIC Nakuluja Academy had been allocated 100 acres in Kanamkemer earlier than 2012. This Court is of the view that if a payment was made for the Kshs. 2,000,000/=, then it must have been for the bigger size of land allocated to them. Furthermore, there is no evidence, even from the Minutes of the Council produced by the Plaintiff as PExh 2 and 3 that the Council even deliberated that an entity being allocated land on 10th May 2012 was required to pay any sum of arrears of land rates from 1999 to 2012 before the allocation.
 204. Inasmuch as PW1 claimed to be the proprietor/sponsor of the Plaintiff, he did not provide any document specifically proving his proprietorship. Be that as it may, the Court considered his evidence meritoriously: it failed to measure to the required standard of proof of facts he asserted on a balance of probability, as explained above.
 205. But that said, the 1st Defendant on her part contended that she was the lawful allottee of plot number 381, Lodwar Town having been allotted the same in 1992. It was the 1st Defendant's case that the 2nd Defendant ejected her from the property in November/December 2014 and destroyed her properties. She claimed that she reported the incident to the Lodwar police station. She added that her main issue was with the 2nd Defendant in regard to the occupation of her land, and not the Plaintiff.



206. The 2nd Defendant testified that he bought the suit land, plots Nos. 349A and B from Henry Ng'ang'a Mwangi who gave him his allotment letter dated 27th October 2000 and a PDP dated 10/05/99 (2nd DExh 3); a document titled Procedure for Documentation of Land Ownership, which was issued to him (2nd DExh 4); Receipt dated 27/10/2000 (2nd DExh 5); Receipt dated 25/05/2011 (2nd DExh 6); Receipt No. 7/01/2015 (2nd DExh 7); and Receipt dated 9/03/2011 (2nd DExh 8). He also produced as 2nd DExh 1 and 2 a Sale Agreement dated 7/02/2005 and an Acknowledgement dated 9/04/2008 and another Sale Agreement dated 15/12/2004; and another Plot Allotment Letter dated 09/03/2011 with a PDP attached, both issued over the same Plot (2nd DExh 10 and 11). He called the said Henry Ng'ang'a to testify as 2nd DW6. He confirmed the said transactions between him and the 2nd Defendant.
207. Charles Lorogoi Ejore 2nd DW2, former Chairman of Urban Council stated that the Minutes presented by the 1st Defendant and dated 27th September, 1992, were fake. He denied that the signature belonged to him since he was not the chairman in 1992.
208. From the totality of the evidence analyzed above, it is clear that Henry Mwangi was the lawful allottee of all that parcel of land referred to as Plot 304B, which lies next to the AIC Nakuluja Academy but referred to as Plots No. 349A and 349B in the allotment documents held by Henry Mwangi, the 2nd DW 6. He confirmed through evidence that he was allocated the plot in the year 2000.
209. The 2nd Defendant claimed to have bought the land from Henry Ng'ang'a Mwangi in the year 2005 whose transaction he completed much later. He produced as 2nd DExh 1 the sale agreement and 2nd DExh 2 to 8 being copies of various documents in support of this averment.
210. This Court has carefully examined the documents. It is not in dispute that Henry Mwangi has not perfected his ownership of the plot before he allegedly sold the plot Nos 349A and 349B. This means that he did not have any proprietary interest in the plots of land to pass over to the 2nd Defendant because what he had as evidence of ownership was a mere allotment letter in addition to receipts to support the claim. A letter of allotment does not found a legal basis for the transfer of any ownership rights to any purported buyer.
211. In the *Torino Enterprises Limited v Attorney General* (Petition 5 (E006) of 2022) [2023] KESC 79 (KLR) (22 September 2023) (Judgment), the Supreme Court held,
- “65. ...We must reiterate the fact that an allotment letter in and by itself, is incapable of conferring a transferable title to an allottee. Put differently, the holder of an allotment letter is incapable of transferring or passing valid title to a third party on the basis of the allotment letter unless and until he becomes the registered proprietor of the land consequent upon the perfection of the Allotment Letter. It matters not therefore that the allotment letter has not lapsed.”
212. Thus, if it is by relying on the sale transaction between him and Henry Ng'ang'a Mwangi, the 2nd Defendant could not claim to have lawfully acquired proprietary interest in the parcel of land known as Plot 349A and 349B. Perhaps his lifeline can only be a claim to the parcel, if it is found, as is elsewhere in this judgment, that the said Henry Mwangi was lawful allottee of the suit land and he the 2nd Defendant's cumulative period of residence on the land to the exclusion of any other claimant and without their permission for it.



Whether there was a double allocation of the suit parcel of land

213. Regarding the allocation to the 1st Defendant the said party, the 1st Defendant admitted that the Municipal Council officials informed that her documents were fake. It is this court's view that what was clear from the evidence was that the 1st Defendant was an employee of Henry Mwangi a fact that remained unchallenged. Further, that Henry Mwangi permitted the 1st Defendant to rent his houses on the disputed parcel of land. It is also clear from the evidence of the 2nd Defendant and his witness, Henry Ng'ang'a that indeed Henry Ng'ang'a had been allocated the parcel of land known as Plot No. 349A and 349B. This was evidence which was supported by that of the 1st DW2 (the Surveyor called Kevin Onyango Obota) and the 3rd DW1, Mr. Nabenyo, whose evidence was, during examination in Chief in favour the Plaintiff but on cross examination and especially when called upon to produce the land register in the 3rd Defendant's office showed, as analyzed below that Henry Mwangi was allocated the Plots.
214. The 2nd Defendant's claim of ownership was that of plots 349A and 349B which he testified was originally plot 349. He testified that he purchased the plots from Henry Ng'ang'a Mwangi vide sale agreement on 7th February, 2005 at a consideration of Kshs. 300,000. He produced a PDP for plots 349A and B, prepared on 7th October, 1998 and approved in 1997/1998. It is not in dispute that the PDP showed a nursery school (AIC Nakuluja) on plot 304A bordering his land, with a road in between them, which he claimed the school blocked.
215. He also produced a copy of a letter dated 8th March, 2015, from the Turkana County Government to Samba and Co. Advocates, which letter stated that plots 349A and 349B belonged to Henry Nganga, while 304A and 304B belong to AIC Nakuluja and 381 to Naomi Enyang, which confirmed that they were separate plots. He further referred to a technical report by the Turkana County Government which he stated that the letter confirmed that plot 304B (claimed by Plaintiff) could not be verified on the ground but was captured in records as 348. He added that the letter also confirmed that plot 304 had encroached on a road and onto his plot.
216. It was clear from the PDP produced by the 2nd Defendant that it lacked an approval number.
217. Notably, the 3rd Defendant produced a certified land register which showed plot 304A and 304B was in the name of AIC Nakuluja (Eکیدor), while 349A and B were in Henry Mwangi's. He, however, noted inconsistencies in how A and B were indicated to be for different plots.
218. As for Plots 349A and 349B the 3rd DW1 testified on cross examination that they belonged to Henry Ng'ang'a Mwangi. He produced 3rd DExh 7 a certified copy of the register held by their office, which showed that Plot No. 304B was allocated to the AIC Nakuluja School while plots 349A and 349B were allocated to Henry Ng'ang'a Mwangi as early as the year 2000.
219. The witness' evidence confirmed, therefore the evidence of the 2nd Defendant and his witness 2nd DW6, one Henry Mwangi, that indeed he (Henry Mwangi) was properly allocated the two plots. This was also confirmed by 2nd DW4 one Festus Ekitela Lorogoi who was the Town Clerk in 2012. The said witness discounted the Minutes produced by the 1st Defendant as evidence supporting her allocation. Be that as it may, he gave clear and candid testimony as to how Henry Ng'ang'a's evidence on the allocation to him was truthful. He also stated that he was the one who wrote the Minutes of the Council and Committee, and that there was no allocation of the parcel No. 304B in the Meeting held on 10/05/2012. Instead, the allocation was for the 100 acres in Kanamkemer. His evidence therefore, together with that of the other 2nd Defendant's witnesses shows that Henry Mwangi was the lawful allottee of the suit land. The subsequent allocation of the same parcel or site even though referred to differently as plot No. 381 and



- 304B was unlawful and irregular and cannot be let to stand because there was already an allocation over the same plot to Henry Ng'ang'a and there was no evidence that the same had been revoked or withdrawn by the 3rd Defendant or the defunct Lodwar Municipal Council. That amounted to double allocation at the same time over the same parcel of land. It is illegal and must stop forthwith.
220. The 1st DW2 gave a very detailed piece of evidence on how puzzling it was that the 3rd Defendant could allocate the same parcel of land twice and actually thrice. He confirmed that indeed there was allocation of the same piece of earth or territory to different people, hence causing confusion. This was the evidence of the other 2nd Defendant's witnesses and himself.
221. Regarding the double allocation, John Naitakai Echwaa 2nd DW2 who testified that he served as a Councilor for Nawoitong ward between 1998 and 2007 and simultaneously as the Mayor of Lodwar Municipal Council from 1998 to 2007, serving two terms, explained the council's land allocation processes during the said period. He confirmed that plot number 349 was allocated to Henry Mwangi in 2000 during his term as a Councilor. He further confirmed that Mwangi already resided in the three houses located on the plot at the time they allocated him. He admitted that Mwangi had stayed on the land for long.
222. He explained that land allocation process, where he stated that the finance committee would be sent to the ground to investigate whether the plots were free or occupied, a step designed to prevent double claims. He went on to explain that the full council would then sit and consider the applications.
223. He stated that the council would not allocate land to anyone who had not applied for it and that investigations were done to confirm plots had no disputes before allocation. His evidence then went to confirm that Henry Mwangi was allocated the plot in issue. When that evidence is compared to PW4 Jennifer Epeyon whose evidence was that where a plot was allocated to two persons, that is to say, there was double allocation, then the person who was allocated earlier was the one whose allocation would stand, and the second allottee would not be recognized as owner, it means that the allocation to Henry Mwangi was the one to stand. That in favour of AIC Nakuluja (Ekidor Primary School) would not supersede that of Henry Mwangi.
224. Furthermore, the 2nd DW3 stated that the Plaintiff was allocated a different plot next to the one allocated to that of Henry Mwangi. He confirmed that he knew when the School was allocated its plot, but admitted that he did not have the Minutes for the specific allocation.
225. In essence, 2nd DW3's testimony primarily corroborates the 2nd Defendant's claim regarding the legitimate allocation of plot 349 to Henry Mwangi during his time as a councilor. He emphasized that Mwangi's prior occupation and the formal process followed. He also distinguished the said allocation from that of the school, confirming that they were separate parcels.
226. Davis Munialo, 1st DW2, County Director Physical Planning, stated that a PDP from 1998 showed a nursery school (AIC Nakuluja) next to plot 349A/B, separated by a road, and that the nursery may have encroached on the road. He also stated that plot 304B could not be verified on the ground, as records showed it as 348. The witness stated that he was not a surveyor but he was tasked to write a report on the existence or otherwise of the plots in issue. He only relied on the records in the 3rd Defendant's office. This Court found his evidence rather shaky regarding the actual location of the plot Nos. 381, 304A and B and 349A and B unreliable compared to that of 1st DW2.
227. Kevin Onyango Obota 1st DW2, a surveyor for Turkana County Government, also noted the confusion in records. He stated that plot 304B could not be verified since it was captured in the records as 348 and that the PDP indicated the nursery on plot 304A had encroached on a road between it and 349B. Further and more telling was that using the coordinates he located all the five plots, namely



- 381, 304A, 304B, 349A and 349B, at the same place. Also, he stated that the plots were allocated to different parties, bearing different numbers, and were lying in the same geographical area, leading to confusion. He stated that this was puzzling and confusing. He stated that plot 304B was found to be within Amin's compound, and 381 was also in the same place.
228. It is worthwhile to note that from the testimonies and evidence of the parties, the parcel in dispute was the one adjacent to 304A.
229. This court conducted a site visit in order to establish the correctness of the alleged encroachment vis a vis the exact location of the adjacent portion to plot number 304. It came out clearly from the site visit that the suit property in this case was the portion adjacent to plot 304, on the left side.
230. During the site visit, PW4, Jennifer Epeyon who was also a Councilor testified that she was involved in the allocation process that gave the Plaintiff the suit parcel. She testified that they sat as a committee and forwarded the same to the council. She also testified that they found the houses occupied by Telkom Kenya and added that Henry Mwangi was not present.
231. Upon cross-examination, she admitted that they did not use a map during allocation. She stated that they only saw that the land was vacant. She stated that the school was established in the two blocks. She also admitted that they did not visit the lands office to confirm if there was any allocation before they allocated the plot. Further, she admitted that there were times the office could find double allocation and, in such instance, the person allocated earlier would then remain on the land or as the one properly allocated the land.
232. PW4 also stated that the lands office was not present but confirmed that they had land documents. It is vital to note that this court observed that PW4 could not tell the exact size of the land allocated.
233. PW2 stated that the Plaintiff's other land in Kanamkemer measured about 100 acres and that its suit parcel, that is plot 304B, which lay to its left in relation to plot 304A had houses for residence of Telkom Kenya staff.
234. One fact came out clear from the Plaintiff's evidence, that when the purported allocation of plot No. 304B was made to it, the land was not surveyed. The officials of the then Council who visited the ground to show the allocated plot only stood at a point on the plot already occupied by the AIC Nakuluja Academy and pointed to the 'allottee' that the parcel was to the side where the 2nd Defendant currently resided, and that was the site one Henry Mwangi had been allocated and resided on until the 2007/2008 post-election violence made him to move from out of safety concerns. Further, it came out from the evidence that the land 'allocated' to the plaintiff School was never surveyed. Further, the persons who showed the Plaintiff that the specific portion they now claim was Plot 304B were not experts in survey or surveyors but only elected and nominated councilors.
235. Therefore, they could not certainly point to an exact spot or part of land in the area, and its boundaries or beacons, which constituted the said parcel of land. Even the plaintiff itself, through PW1 could not do so. It only relied on the physical features that were on the ground at the moment, being the perimeter wall that had been erected around the alleged suit plot. Furthermore, the Plaintiff did not produce a survey map or other survey records either from the 3rd Defendant's Office which took over the functions of the defunct Lodwar Municipal Council or the Lands Office of Turkana County, to show that indeed the specific portion of land the parties pointed to was indeed parcel No. 304B.
236. The other important fact that came out, from the 2 DW2 (Henry Mwangi) and 3 DW1 (Mr. Ebenyo), was that plot No. 349 which had been allocated to Henry Mwangi and which he purportedly sold to the 2nd Defendant, was never repossessed for failure of the allottee to fulfill the conditions of allocation.



It means that the allocation to him was still valid and could not be taken away from him without following due process.

237. Lastly, regarding the evidence that the plot the Plaintiff's witnesses pointed out to while on the locus in quo as belonging to the Plaintiff was public land on which employees of Telkom Kenya Limited resided on, it was the Plaintiff's evidence that the houses built on it were not done by the then municipal council. The evidence by the 2nd Defendant and 2nd DW6 was that they were not done by Henry Mwangi, but Henry Mwangi was allocated the particular land and later purported to sell it to the 2nd Defendant.
238. Be that as it may, the 2nd Defendant, on the other hand, identified the suit land as the plot which he was shown by Henry Mwangi when the latter sold it to him and he moved in to occupy it. He confirmed that he had lived or resided on the land since 1996.
239. It is this court's view that the site visit brought some form of clarity as to prior occupation on the property that was adjacent to plot 304A. As this court earlier noted, it is not in dispute that the plot owned by the Plaintiff and that claimed by the 2nd Defendant are separate and distinct. There is a perimeter fence erected to separate them.
240. PW4 confirmed this position and admitted that when they allocated the same to the Plaintiff, they had not verified with the lands office or even used a map to ascertain whether it was in fact open for allocation.
241. She also admitted that, as an allocation committee, it could at times come across instances of double allocation. She added that in such instances, the one who took possession earlier would remain on or be given the land.
242. It is this court's view that what came out clearly from the evidence of all the parties, that is to say, that of PW1, PW2, PW3, PW4, 1DW1, 2nd DW1, 2nd DW6, and the site visit, that at the time of allocation the Plaintiff found houses on the suit parcel. It was also clear that the said houses belonged to what was alleged to be Telkom Kenya staff, but it turns out that indeed the said land had already been allocated to one Henry Ng'ang'a Mwangi, 2nd DW6.
243. It was not in contention that Henry Mwangi was at first an employee of Telkom Kenya and was allocated the said parcel in 1996 before the Plaintiff. This, in terms of the evidence of PW4, Jenipher, who was one of the allocation Committee members, the person who was allocated land first would be the one to be considered as the lawful allottee or owner. Furthermore, PW2's testimony was that the Plaintiff found 3 houses on the said land prior to allocation. PW4 also confirmed the same. Indeed, 1st DW3, Naomi Enyang, also confirmed the same regarding the existence of houses on the land when she applied for allocation. Actually, by fortifying the above position, the evidence by 2nd DW3 confirmed that the Council had in fact allocated the suit parcel to Henry Mwangi who later sold it to the 2nd Defendant, as earlier stated. The 3rd DW1, Mr. Nabenyo also confirmed that there were records of Henry Mwangi having been allocated the land. He produced the record which showed that indeed Henry Mwangi was allocated Plot No 349A and 349B in the year 2000. That was also supported by the evidence of 2nd DW1 and 2nd DW4.
244. This evidence of 3rd DW1 was the evidence which 2nd DW2 emphasized about not just double allocation but triple allocation but the land being given different reference or allocation numbers.
245. It is this court's view that PW4's evidence, at the site, backed up by that of 2nd DW3 confirmed that the allocation process conducted by Council in allocating the same to the Plaintiff did not adhere to the process of due diligence: the Council just moved to the site and pointed to the area which is



now occupied by the 2nd Defendant or thereabouts that it was the one the Council of Committee had allocated to the Plaintiff. Her evidence is so clear that there was no due diligence that it is unmistakable. That serious procedural lapse was that the Committee did not send surveyors to the ground to first survey the land and establish its boundaries and issue a PDP, rather they pointed it out to the Plaintiff's representatives and left. They did not ascertain whether indeed it was stretched to that which another person, such as one Henry Ng'ang'a or the 1st DW3 (Naomi Enyang), had been allocated.

246. It is my opinion that had the Committee, of which PW4 was part, conducted due diligence, it would have established that the suit parcel was already allocated to and occupied by one Henry Mwangi. In addition, evidence by PW4 on the person who was first in occupation remained on the parcel in instances of double allocation did not support the Plaintiff's case but the 2nd Defendants case. The practice of double allocation of land has bedeviled this country for many years and it is time that it stopped. For a public body to allocate land to two people at the same time and expect to go scot free is, to say the least, a disgrace and undermines the integrity of the sanctity of title. An allocation of a plot or parcel of land to two people can only happen if the initial allocation has been confirmed to have failed. Even when the earlier allocation has not materialized and the land is to be reallocated, the entity allocating should ensure that the process of declaring the initial allocation failed is complete, in order to avoid conflicts and loss of resources.

247. In the case of *Clement v Chebii* [2023] KEELC 16142 (KLR) the court held as follows:

“Double allocation occurs where by mistake which is admitted by the allotting authority, two letters of allocation are issued to two different people in respect of the same property. These allocations must have been issued regularly and procedurally without fraud save for the mistake. If this be the case, then the first in time prevails and the second one cannot suffice.”

248. It is also my opinion that the instant case does not merely present an instance of double allocation since the suit parcel was already allocated to Henry Mwangi before the Plaintiff was allegedly allocated but a reckless way of a Committee steeped on gratifying cronies of some of their members allocating more than three individuals the same portion of earth but christening it differently by different allocation numbers. That cannot invalidate the first allocation unless the legal due processes are followed. In addition, the allotting authority, in this case the Council, whose evidence was picked up by PW4 and 2nd DW3, and 3rd DW1, did not raise any issue of error or mistake in the allocation of the suit parcel in the first place to one Henry Mwangi.

249. This Court thus finds that there was double allocation of the suit land, that is to say, the specific area on earth in Lodwar which was known as plot No. 304B and also referred to as plot 349A and 349B. The court has found, as per the evidence of PW 2, 1st DW2, the 2nd DW1 and 2nd DW 4, and 3rd DW1, that there were plots located on the same portion of earth next to plot No. 304A.

Whether the Plaintiff's suit is time-barred

250. Lastly, even if this Court were to be wrong in the analysis above, which in my humble view is not the case but a correct finding, this Court considered one other issue, whether the Plaintiff's suit was time-barred. This issue in question is relevant to this suit because it was clear that the Plaintiff had never taken possession of the land since it was purportedly allocated to it. This is crucial on two fronts against the Plaintiff's case. If the receipts for the sum of Kshs. 2,000,0000/= and the allotment letter it relied on as evidence that there was an allocation of the parcel of land to it, is anything to rely on, it means that when the said party was allocated the land it ought to have taken immediate occupation. Further, the receipts show and evidence then that the parcel was allocated to the Plaintiff in 1999, the year from



when the said party began to pay rates from by way of a backdate or retrospective application of the date when the rates became due from the Plaintiff, and they paid. It did not. When that evidence is taken in totality with the 2nd Defendant's evidence that Henry Ng'ang'a Mwangi was allocated the land in 2000, yet the Plaintiff was claiming it in the year 2013, through a suit, it means that the 2nd Defendant had occupied the parcel of land for over 12 years.

251. Section 7 of the *Limitation of Actions Act* provides that;

“An action may not be brought by any person to recover land after the end of twelve years from the date on which the right of action accrued to him or, if it first accrued to some person through whom he claims, to that person.”

252. That being so, the Plaintiff could not recover the said land from the 2nd Defendant, who was permitted to enter on and use the suit land by Henry Ng'ang'a Mwangi after the payment of the agreement of sale, both entered into over the (failed) sale of the land. In this respect, both the Plaintiff and the 3rd Defendant would have to grapple with the fact that the land had been allocated to Henry Mwangi in the year 2000 and that allocation had not been revoked, and if it was, whether it followed due process since, the allocation was aimed at making it private. The only advantage, though, the 2nd Defendant has is that if the allocations of the Plaintiff were to stand, then the 2nd Defendant, having been residing on the land for more than twelve years. Secondly, if the Plaintiff attempted to recover the suit land from the 2nd Defendant, it would be estopped from recovery thereof, and even claiming ownership thereto, since, going by the period, it would have paid rates for it, its ownership if it became private land shall have been extinguished by effluxion of time.

253. As a parting shot, it is intriguing that the 3rd Defendant made a lot of arguments that the land was public land, and that the AIC Nakuluja Academy was a public institution, hence the reason why it (purportedly) allocated the Plot 304B. It is worth noting that the said institution (School) is an AIC Church affiliated one.

254. From the totality of the evidence, since the Plaintiff in Suit No. Kitale ELC No. 5 of 2015 claimed ownership of parcel No. 381 to the exclusion of plots No. 349A and 349B but it turned out particularly from the evidence of 1st DW1 and 1st DW2 and 2nd DW4 that the suit land lay on the same spot where the latter plots were situate due to double allocation, and Henry Mwangi was already allocated the said plots in the year 2000, to that extent, the 2nd Defendant herein also fails.

Whether the Counterclaims by the 2nd Defendant succeed

255. This Court has extensively considered the evidence on the process of allocation of plot No. 304B. It has also received and analyzed the evidence on the allocation and ownership of the suit land referred to as plot No. 349A and 349B, which the 2nd Defendant claims to own through a transaction of purchase between him and Henry Mwangi. It is noteworthy that the evidence led was that Henry Mwangi sold to him the two plots, and he paid him the sum of Kshs 1,000,000/= and the seller handed to him the documents in relation to the transaction. What, however, is clear is that the sale failed to measure up to the legal position that the seller ought to pass good title to the purchaser, as the Torino case (supra) holds. That being the case, as much as Henry Mwangi was allocated the two plots, he did not perfect the same by obtaining a lease thereto before he would sell it to the 2nd Defendant. Thus, the 2nd Defendant's Counterclaims that the two suits herein consolidated failed, on a balance of probabilities.

256. Each party to bear its own costs.

257. Orders accordingly.



**JUDGMENT DATED, SIGNED AND DELIVERED VIRTUALLY VIA THE TEAMS PLATFORM
THIS 31ST DAY OF JULY 2025**

HON. DR. IUR F. NYAGAKA

JUDGE

In the presence of:

Ms. Mbungu for the 1st Defendant

Ms Kyuli Owiddo Advocate holding brief for Onsembe for the 3rd Defendants

David Nakaini (one of the plaintiffs representatives)

Ms. Nafula for the Plaintiffs

Mr. Barongo for the 2nd Defendant.

