



Moraa & 4 others v County Government of Nyamira (Environment and Land Case 76 of 2021) [2025] KEELC 7763 (KLR) (12 November 2025) (Judgment)

Neutral citation: [2025] KEELC 7763 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYAMIRA
ENVIRONMENT AND LAND CASE 76 OF 2021
DO OHUNGO, J
NOVEMBER 12, 2025**

BETWEEN

**AGNES NYARIKI MORAA 1ST PLAINTIFF
MILKA MOKEIRA ORINA 2ND PLAINTIFF
JOHN KIRIAMA 3RD PLAINTIFF
SILAS OMBOGO 4TH PLAINTIFF
JAPHET NYAMIANO 5TH PLAINTIFF**

AND

COUNTY GOVERNMENT OF NYAMIRA DEFENDANT

JUDGMENT

1. Litigation in this matter started on 28th April 2020 at the Environment and Land Court in Kisii when the Plaintiffs filed Plaintiff dated 27th April 2020. The matter was later transferred to this court.
2. The initial Plaintiff was replaced by Amended Plaintiff amended on 23rd June 2023. The Plaintiffs averred in the Amended Plaintiff that they were registered owners of the parcels of land known as Keroka Township/45, 47”A”, 47 “B”, 48 “A”, and 48 “B” (the suit properties) and that they had constructed buildings and other structures on the suit properties with the Defendant’s approval. That on 14th April 2020, the Defendant demolished the structures on the suit properties on claims that they had been erected on a road reserve.
3. The Plaintiffs further averred that there was no road reserve passing through the suit properties and that the demolitions had caused them losses. They pleaded particulars of special damages and prayed for judgment against the Defendant for:



- a. A Declaration that the 1st, 2nd, 3rd, 4th, 5th, and 6th Plaintiffs are the lawful owners of Keroka Town plots known as Keroka Township/45, Keroka Township/47 “A”, Keroka Township/47 “B”, Keroka Township/48 “A” and Keroka Township/48 “B” respectively.
 - b. A declaration that the Defendant has no right, mandate or authority to forcefully enter upon and build a road or any developments on the Plaintiffs’ plots known as Keroka Township/45, Keroka Township/47 “A”, Keroka Township/47 “B”, Keroka Township/48 “A” and Keroka Township/48 “B” without due regard to the law.
 - c. An order of injunction restraining the Defendant either by herself, her agents, servants or anyone claiming under the said Defendant from entering upon, trespassing onto, taking possession, demolishing, building on, destroying developments or in any other way whatsoever interfering with the Plaintiffs’ rights over the suit properties that is plots known as Keroka Township/45, Keroka Township/47 “A”, Keroka Township/47 “B”, Keroka Township/48 “A” and Keroka Township/48 “B”.
 - d. An order for Special Damages as pleaded in paragraph 14A.
 - e. Costs of the suit.
4. The Defendant filed Amended Statement of Defence amended on 19th September 2023. It denied the Plaintiffs’ averments in the Amended Plaintiff and urged the Court to dismiss the suit with costs.
 5. The First Plaintiff testified as PW1. She adopted her witness statement dated 23rd June 2023 and produced copies of documents in the Plaintiffs’ list of documents dated 23rd June 2023. She stated that she was the owner of the parcel of land known as Keroka Township/45 which had been allotted to her. That she developed the plot with the approval of the Defendant and had remitted annual rent to the Defendant. That on 14th April 2020, the Defendant’s agents and servants went to the parcel and demolished structures which had been erected thereon claiming that the structures had been erected on a road reserve.
 6. The First Plaintiff further stated that the demolition caused her loss which she particularised at KShs 1,850,000 being value of the building, KShs 280,000 being disturbance allowance, KShs 300,000 being loss of rent for 10 months and KShs 300,000 being loss of rent during reconstruction period estimated at 10 months.
 7. Under cross examination and re-examination, she stated that she could not remember when she was allotted the plot by Kisii County Council and that prior to demolition, she had buildings on the plot which she rented out for business. She however could not remember the names of her tenants and stated that she was not involved in matters of the tenants but her late husband was. She could not produce any approvals for development on the plot and explained that her late husband was involved with the plot while she stayed at home.
 8. Joel Ombati Nyamwenga (PW2) stated that he was a registered valuer practising in the name and style of Milestone Land Access Ltd based in Kisii Town, a registered member of the Institution of Surveyors of Kenya and a registered valuer. He added that he prepared a report dated 28th February 2023 on title numbers 8727/45 – Keroka Market, 8727/47A – Keroka Market, 8727/47B – Keroka Market, 8727/48A – Keroka Market, and 8727/48B – Keroka Market. He also stated that his report did not concern parcel number East Kitutu/Mwamangera/1142 which neighbours the plots in respect of which he made the report. He further stated that his report covered the developments that existed and the destruction as well as the value of the destruction.



9. Silas Ombogo Mugoya, the Fourth Plaintiff, testified as PW3 and adopted his witness statement dated 7th March 2024. He stated that he was the owner of parcel of land known as Keroka 8727/48A and that he purchased it in 1980 from Patroba Ogembo who had been issued with a rent card by Gusii County Council. That the property was transferred by the then Keroka Town Council through minute number WTP/MN/54/2001 (1) which issued to him a rent card for Plot No. 48A.
10. PW3 further stated that since transfer he had been paying ground rent of KShs 1,200 until 27th March 2020 when his developments were demolished by the Defendant. rates to the Defendant. That on 28th June 2002, Keroka Town Council wrote a letter to the Commissioner of Lands clearing him for processing of a lease in his favour and that between the years 2003 and 2005, he constructed a business cum residential premises on the plot which he let partially.
11. That on the day of demolition, he received a call from his wife informing him of ongoing demolition of their building and on rushing there, he saw bulldozers demolishing his property while guided by the Defendant's officers and that his efforts to stop the demolition were in vain since he was chased away by the Defendant's enforcement officers. He also stated that he lost permanent developments and movable assets worth an estimated value of KShs 6,214,500 and that during survey ordered by the court, his plot was located in the same location where his building was demolished.
12. Under cross-examination and re-examination, PW3 stated that the sale agreement through which he purchased his property got burnt during the demolition and that at the time of the demolition he had two tenants from whom he earned a total monthly rent of KShs 75,000. That the value of the building was KShs 5,000,000 and that receipts, approvals and lease agreements were destroyed in the house.
13. Japheth Nyamieno Onyari, the Fifth Plaintiff, testified as PW4 and adopted his witness statement dated 7th March 2024. He stated that he was the owner of parcel of land known as Keroka 8727/48B and that he purchased it in 1980 from Patroba Ogembo who had been issued with a rent card by Gusii County Council. That the property was transferred by the then Keroka Town Council through minute number WTP/MN/54/2001 (1) which issued to him a rent card for Plot No. 48B.
14. He went on to state that since transfer he had been paying ground rent of KShs 1,200 until 27th March 2020 when his developments were demolished by the Defendant. rates to the Defendant. That on 24th December 2012, Keroka Town Council wrote a letter to the Permanent Secretary, Office of the Deputy Prime Minister and Minister for Local Government clearing him for processing of a lease in his favour and that on 3rd November 2016, the Defendant wrote a clearance letter for payment of rates.
15. PW4 also stated that he carried out several renovations and development on his parcel further to Patroba Ogembo's semi-permanent structures and that he did not have any other document from Patroba. He added that he had tenants from whom he collected between KShs 20,000 and KShs 30,000 as rent, but all the receipts were destroyed during the demolition.
16. Milkah Mokeira Orina, the Second Plaintiff, testified as PW5 and adopted her witness statement dated 7th March 2024. She stated that she was the owner of parcel of land known as Keroka 8727/48A and that she purchased it with her late husband in 1968 upon which they were issued with a rent card by Gusii County Council. That after her husband's death, she petitioned Keroka Town Council to transfer his half share to her and in 2003 the transfer was effected through minute number MN/STP/15/03.
17. She added that she had been paying ground rent until 27th March 2020 when her developments were demolished by the Defendant. She also stated that she had developed the property for rental purposes and that she lost permanent developments and movable assets worth an estimated value



- of KShs 4,270,000 in the demolition. She further testified that her plot was number 8727/47A, that they purchased it from one Mr Kebari and that it is distinct from parcel number East Kitutu/Mwamangera/1142.
18. Lastly, John Mathew Kiriama, the Third Plaintiff, testified as PW6 and adopted his witness statement dated 7th March 2024. He stated that he was the owner of parcel of land known as Keroka 8727/47B and that he had copies of rent payment receipts and rent demands from Keroka Town Council which shows that he was the owner of the plot. That although the Defendant had been insisting that the parcel on which demolitions were carried out was East Kitutu/Mwamangera/1142, that was not true and that his land was distinct from the said parcel.
 19. PW6 further stated that that the plot was allotted to him by the defunct Keroka Town Council and that there were minutes of Keroka Town Council confirming the existence of the Plaintiffs' plots. He added that his building which was demolished was valued at KShs 1,700,000 and that he was earning monthly rent of KShs 40,000 from it.
 20. The Plaintiffs' case was then closed.
 21. Robert Torori, a County Surveyor working for the Defendant testified as DW1 and stated that he prepared a report dated 15th March 2023 concerning plot numbers 45, 47A, 47B, 48A and 48B. He stated that the plots do not exist on the ground and that whatever the Plaintiffs claim is on parcel number East Kitutu/Mwamangera/1142. That sheet number 32 of the registry index map shows that parcel number East Kitutu/Mwamangera/1142 is still intact and has not been subdivided.
 22. He stated that when he went to the ground he found that parcel number East Kitutu/Mwamangera/1142 was being used as an open market belonging to the Defendant and that its acreage on the ground tallied with that captured in the title deed. He produced his report, a copy of the registry index map, a copy of a certificate of official search dated 13th January 2022 and a copy of the title deed in respect of as East Kitutu/Mwamangera/1142.
 23. On 1st October 2024, at the close of DW1's testimony, the Plaintiff's counsel applied for an order that the National Government surveyor visit the parcels and prepare a report since there was conflict between the reports produced by the Plaintiffs and that of the Defendant. Since there was no objection by the defence, the court gave an order as was sought.
 24. Martin Osano, the County Land Registrar Nyamira testified as DW2. He stated that he visited the site pursuant to the order of 1st October 2024 and prepared a report dated 2nd April 2025, which he produced. He further testified that they visited the site on 19th March 2025 and that he identified parcel number East Kitutu/Mwamangera/1142 on the ground as well as parcel numbers 45, 47A, 47B, 48A, 48B and 43A.
 25. DW2 went on to state that he did not have any records for parcel numbers 45, 47A, 47B, 48A, 48B and 43A at the land registry and that the said parcels were created from a parcel located opposite East Kitutu/Mwamangera/1142. He could not however tell which parcel it was and added that he could not locate parcel numbers 45, 47A, 47B, 48A, 48B and 43A in the registry index map which DW1 had produced. He further stated that they found a building on parcel 45 when they went to the site and that the parcel was locate elsewhere and not where the Plaintiffs had shown them.
 26. Henry Otieno Owuor, the County Land Surveyor Nyamira County, testified as DW3 and stated that he visited the site together with DW2 on 19th March 2025 pursuant to the order of 1st October 2024 and prepared a report dated 28th March 2025. He produced the report and added that his findings were that parcels 47A, 47B, 48A and 48B exist on the ground and that they were initially part of East



- Kitutu/Mwamangera/1142. He observed that according to the certificate of official search which DW1 produced, East Kitutu/Mwamangera/1142 had not been subdivided yet according to the registry index map which DW1 produced, parcels 47A, 47B, 48A and 48B were supposed to be inside East Kitutu/Mwamangera/1142.
27. He further stated that they found an open air market owned by the Defendant on East Kitutu/Mwamangera/1142 and an old building which was occupied by someone other than the First Plaintiff on parcel 45. He added that parcels 45 to 50 are located inside East Kitutu/Mwamangera/1142 and that a portion of East Kitutu/Mwamangera/1142 was hived off although it was public land which had been identified as an open air market. That after subdivision of East Kitutu/Mwamangera/1142, the remainder should have been given a new parcel number and that the position of parcels 45, 47A, 47B, 48A and 48B on the ground does not affect the ongoing construction of the market.
 28. Zachariah C. O. Ocharo (DW4) testified that he worked for the Defendant as Director of Urban Development and that he joined the County Council of Nyamira on 25th November 2005 before later crossing over to the Defendant on 25th March 2013 after it was established. He adopted his witness statement which he filed on 9th November 2023. He stated in the statement that the Defendant has been the proprietor of parcel number East Kitutu/Mwamangera/1142 since 17th July 1970. That the parcel has always been and remains public land and had never been alienated to any private entity or individual.
 29. DW4 further stated that there are no demarcated plots known as Keroka Township 45, 47A, 47B, 48A or 48B and that the Plaintiffs were never allocated the said plots by Gusii County Council since the said council had no legal authority to allocate public land. He added that he was not aware if any buildings were demolished and stated that the Defendant has not erected any structure on East Kitutu/Mwamangera/1142.
 30. Francis M. Mbeche (DW5), the Director Land Administration at Nyamira County Government in charge of records on public land adopted his witness statement which he filed on 9th November 2023. He stated that the Defendant had no record indicating that the Plaintiffs were allocated the parcels that they claim. He added that parcel number East Kitutu/Mwamangera/1142 has always been and remains public land and has never been alienated to any private and was being used as an open air market by residents of Keroka. He also stated that the plots listed by the Plaintiffs do not exist and that the Defendant did not approve any construction as claimed by the Plaintiffs. He concluded by stating that the Defendant did not carry out any demolition as claimed by the Plaintiffs.
 31. Everlyne Bosibori Nyambane (DW6) testified that she was working for the Defendant as a Physical Planner and adopted her witness statement which she filed on 9th November 2023. She stated that parcel number East Kitutu/Mwamangera/1142 remains public land and has never been alienated to any private person. She added that there was no part development plan (PDP) giving rise to the plots claimed by the Plaintiffs. She further testified that her work was to plan land uses and to assign land to public and private use and added that the Defendant is building a market on East Kitutu/Mwamangera/1142 at the site of the current open air market.
 32. The defence case was then closed, after which directions were given that parties file and exchange written submissions.
 33. The Plaintiffs filed submissions dated 29th July 2025. They submitted that the Fourth Plaintiff's compensation should be as per his valuation since there's a typing error in the plaint. They contended that the plots exist on the ground and that they are not part of East Kitutu/Mwamangera/1142. That justified that position by contending that there has been no renumbering or change in size of



East Kitutu/Mwamangera/1142 as ordinarily happens in the case of subdivision. On that basis, they asserted that the plots which they claim are different from East Kitutu/Mwamangera/1142 and are subdivisions of East Kitutu/Mwamang'era/8727. They also submitted that their valuation reports are fair and reasonable.

34. In response, the Defendant filed submissions dated 8th September 2025. It submitted that the Plaintiffs had not produced documents showing ownership of the plots. That the First Plaintiff produced a certificate of lease but no documents showing how she obtained it and that her the letter of allotment which she produced refers to a different plot in terms of description and size.
35. The Defendant went on to submit that the Second Plaintiff admitted that she has no title while the Third to Fifth Plaintiffs equally did not produce ownership documents. That although the Fourth and Fifth Plaintiffs claimed that they purchased their plots from Patroba Ogembo, they but did not produce ownership documents in the name of Patroba Ogembo. The Defendant further submitted that all the plots claimed by the Plaintiffs fall within parcel number East Kitutu/Mwamangera/1142 which is public land belonging to it and that having failed to prove ownership, no trespass was established and that the Plaintiffs' case should be dismissed for want of merit.
36. I have considered the pleadings, evidence and submissions. The issues that arise for determination are whether the suit properties are within parcel number East Kitutu/Mwamangera/1142, whether the Plaintiffs have established ownership of the suit properties and whether the reliefs sought should issue.
37. The Plaintiffs' case is that they are the owners of the parcels of land known as Keroka Township/45, 47"A", 47 "B", 48 "A", and 48 "B" (the suit properties). They contend that the suit properties are distinct from parcel number East Kitutu/Mwamangera/1142. The Plaintiffs placed a lot of reliance on the report dated 28th February 2023, prepared by Joel Ombati Nyamwenga (PW2). I note that the report concerns parcel numbers 8727/45 – Keroka Market, 8727/47A – Keroka Market, 8727/47B – Keroka Market, 8727/48A – Keroka Market, and 8727/48B – Keroka Market whose parcel numbers are markedly different from Keroka Township/45, 47"A", 47 "B", 48 "A", and 48 "B" (the suit properties). Consequently, PW2's finding that parcel numbers 8727/45 – Keroka Market, 8727/47A – Keroka Market, 8727/47B – Keroka Market, 8727/48A – Keroka Market, and 8727/48B – Keroka Market are distinct and separate from parcel number East Kitutu/Mwamangera/1142 is not of any help to the court. I am unable to verify that the parcels PW2 inspected are the suit properties.
38. I have also considered the testimony of Robert Torori, a County Surveyor working for the Defendant who testified as DW1, the testimony of Henry Otieno Owuor, a National Government surveyor Nyamira who testified as DW3, as well as the testimonies of DW4 through to DW6, all of whom agreed that the land that the Plaintiffs claim fall within East Kitutu/Mwamangera/1142. I have placed more weight on the testimonies of these defence witnesses since unlike the Plaintiffs, they are experts in land and survey. I also bear in mind that the registry index map which the land registrar produced makes it clear that the suit properties are located inside East Kitutu/Mwamangera/1142. In the circumstances, I find that the suit properties are within parcel number East Kitutu/Mwamangera/1142.
39. The Plaintiffs' case is that they were allotted the parcels and that they have been paying land rent and land rates to the Defendant. They concede that none of them, save for the First Plaintiff, have any title document. On her part, the First Plaintiff claims that she has a certificate of lease in her favour.
40. According to the Plaintiffs, the suit properties are located in Keroka Town. By pegging their claim to ownership on allotments, the Plaintiffs are in essence contending that public land located in Keroka Town was alienated in their favour. Save for the First Plaintiff, none of the Plaintiffs produced any letter of allotment. They instead relied on what they termed as minutes of Keroka Town Council, all of



which predate 2012 land laws. Equally, the letter of allotment that the First Plaintiff relied on is dated 27th June 1995, long before the advent of the 2012 land laws.

41. Assuming that the suit properties were unalienated government land prior to the alleged allotment to the Plaintiffs, the procedure for allocation of unalienated public land required to start with planning through a PDP followed by surveying. At the time in question, the Government Lands Act (repealed) was in force.

42. Pursuant to Section 9 of the Government Lands Act (repealed), the Commissioner of Lands had power of disposal of land within Townships. The section provided as follows:

The Commissioner may cause any portion of a Township which is not required for public purposes to be divided into plots suitable for the erection of buildings for business or residential purposes, and such plots may from time to time be disposed of in the prescribed manner.

43. The procedure for the allocation of unalienated public land has been the subject of several court decisions. In *Dina Management Limited v County Government of Mombasa & 5 others* [2023] KESC 30 (KLR), the Supreme Court discussed the subject as follows:

104. The procedure for the allocation of unalienated land is laid out by the Environment and Land Court in *Nelson Kazungu Chai & 9 others v Pwani University* [2014] eKLR as follows: “...It is trite law that under the repealed Government Lands Act, a Part Development Plan must be drawn and approved by the Commissioner of Lands or the Minister for lands before any unalienated Government land could be allocated. After a Part Development Plan (PDP) has been drawn, a letter of allotment based on the approved PDP is then issued to the allottees.

131. It is only after the issuance of the letter of allotment, and the compliance of the terms therein, that a cadastral survey can be conducted for the purpose of issuance of a certificate of lease. This procedural requirement was confirmed by the surveyor, PW3. The process was also reinstated in the case of *African Line Transport Co Ltd v Attorney General, Mombasa HCCC No 276 of 2013* where Njagi J held as follows: “Secondly, all the defence witnesses were unanimous that in the normal course of events, planning comes first, then surveying follows. A letter of allotment is invariably accompanied by a PDP with a definite number. These are then taken to the department of survey, who undertake the surveying. Once the surveying is complete, it is then referred to the Director of Surveys for authentication and approval. Thereafter, a land reference number is issued in respect of the plot 132. A part development plan (PDP) can only be prepared in respect to Government land that has not been alienated or surveyed...”

105. This process is restated in *African Line Transport Co Ltd v Attorney General, Mombasa, HCCC No 276 of 2003* [2007] eKLR where it was held that planning comes first, then surveying. A letter of allotment is invariably accompanied by a PDP with a definite number, which would then be taken to the Department of Survey for surveying. Thereafter, it is then referred to the Director of Surveys for authentication and approval. It is after that process that a land reference number is issued in respect of the plot.

44. Thus, preparation and approval of a Part Development Plan (PDP) was a condition precedent for allocation of public land. It was only after approval of the PDP that a letter of allotment could be issued to an allottee. The Plaintiffs have not produced any PDP. Other than the First Plaintiff, they have not even produced any letter of allotment. I also note that DW4 to DW6, officers of the Defendant who were responsible for dealing with land, all testified that no allotments were made in favour of the Plaintiffs.



45. Even if all the Plaintiffs would have produced letters of allotment, they would have needed to go beyond merely waving such letters of allotment in the court's face. It is plain enough that a letter of allotment is not title to land. The allottee has to follow it up, comply with all the conditions of the offer as well as the procedure for obtaining title to public land before he gets a valid title document. See *Wreck Motor Enterprises v Commissioner of Lands & 3 others* [1997] eKLR.
46. Thus, an allotment is no more than an invitation to treat and does not confer an interest in land. The Supreme Court affirmed that position in *Torino Enterprises Limited v Attorney General* (Petition 5 (E006) of 2022) [2023] KESC 79 (KLR) (22 September 2023) (Judgment) where it held:

So, can an allotment letter pass good title? It is settled law that an allotment letter is incapable of conferring interest in land, being nothing more than an offer, awaiting the fulfilment of conditions stipulated therein. In *Dr Joseph NK Arap Ng'ok v Justice Moiyo Ole Keiyua & 4 others* CA 60/1997 [unreported]; and in *Gladys Wanjiru Ngacha v Teresa Chepsaat & 4 others* HC Civil Case No 182 of 1992; [2008] eKLR, the superior courts restated this principle as follows:

“It has been held severally that a letter of allotment per se is nothing but an invitation to treat. It does not constitute a contract between the offerer and the offeree and does not confer an interest in land at all”.

47. In the absence of any letters of allotment together with evidence of compliance with all the terms therein, including payment of stand premium and other related charges, I find that the Second to Fifth Plaintiffs have failed to establish ownership of the respective suit properties that they have claimed.
48. Regarding the First Plaintiff, I note that beyond producing the letter of allotment, she did not adduce any evidence to establish validity of the allotment. She did not demonstrate that any PDP was prepared and approved prior to issuance of the allotment to her. She did not produce evidence of compliance with all the terms in the letter of allotment, including payment of stand premium and other related charges. The letter of offer is in respect of un-surveyed “commercial Plot No. 42 Keroka” yet her certificate of lease is in respect of parcel number Keroka Township/45. No explanation was offered regarding the discrepancy. Further, she neither produced a registered lease that led to the certificate of lease nor a certificate of search that vouches for her proprietorship. It is important to note that the Land Registrar made is clear in his testimony that there are no records in the registry that support the existence of the suit properties, including parcel number Keroka Township/45.
49. The Plaintiffs have attempted to explain their failure to produce documents that support their claims of ownership by stating that the documents were destroyed during demolitions. I found that explanation self-contradicting since all the Plaintiffs claim that they had rented out their building on the suit properties. How then were the documents in premises rented to tenants?
50. While there is no counterclaim for cancellation of the First Plaintiff's title if any, this court cannot disregard glaring questions regarding the First Plaintiff's alleged title. The Supreme Court recently restated, in *Sehmi & another v Tarabana Company Limited & 5 others* (Petition E033 of 2023) [2025] KESC 21 (KLR) (11 April 2025) (Judgment), the position that an allotment that is neither legal nor regular cannot create a valid title and that the courts cannot close their eyes to irregularities attendant to an allocation of public land. I therefore find that the First Plaintiff has failed to establish ownership of parcel number Keroka Township/45.
51. In view of the foregoing, I find no merit in the Plaintiffs' case. I dismiss it with costs to the Defendant.

DATED, SIGNED, AND DELIVERED AT NYAMIRA, THIS 12TH DAY OF NOVEMBER 2025.



D. O. OHUNGO

JUDGE

Delivered in the presence of:

The Third and Fifth Plaintiffs present in person

Counsel for the Plaintiffs absent

Mr Kamau for the Defendant

Court Assistant: B Kerubo

