



REPUBLIC OF KENYA



**Chelimo v Kaputiei (Environment and Land Appeal E001 of 2024)  
[2025] KEELC 8126 (KLR) (4 November 2025) (Judgment)**

Neutral citation: [2025] KEELC 8126 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KABARNET  
ENVIRONMENT AND LAND APPEAL E001 OF 2024**

**L WAITHAKA, J**

**NOVEMBER 4, 2025**

**BETWEEN**

**HENRY KIPROP CHELIMO ..... APPELLANT**

**AND**

**JULIUS CHELIMO KAPUTIEI ..... RESPONDENT**

*(Being an appeal from the Judgment of Hon. Purity Kosgei SPM  
delivered on 25th April 2024 in Kabarnet SPMC ELC No. 7 of 2018)*

**JUDGMENT**

**Introduction**

1. The circumstances leading to filing of this appeal are that vide a judgment delivered on 25<sup>th</sup> April, 2024 in Kabarnet SPMC ELC Case No. 7 of 2018-Julius Chelimo Kaputiei vs. Henry Kiprop Chelimo, the trial court entered judgment in favour of the respondent. In effect, the trial court determined that the respondent is the lawful owner of the parcel of land known as Mochongoi Block III/533, hereinafter referred to the suit property.
2. The suit property was claimed by both the respondent and the appellant. The respondent's case was that he was allocated the suit property by the Settlement Fund Trustee (SFT) sometime in 2006 or thereabout; that upon being allocated the suit property, he paid the allocation fees of Kshs 14,250/-, was shown the plot, took possession and developed it.
3. The respondent complained that sometime in 2008 and thereafter, the defendant through a third party, forcefully entered the suit property thereby interfering with his right of ownership of the suit property.
4. The appellant filed a statement of defence and counterclaim, dated 19<sup>th</sup> November 2018, in which he contended that he was allocated the suit property sometime in 1999; that upon being allocated



the suit property, he took possession of it through his agent, Elijah Rotich, and made payment to the Government as follows:-

- a. Kshs. 2,027/- on 28<sup>th</sup> December, 2004 vide official receipt No. 2149367;
  - b. Kshs. 1,500/- on 8<sup>th</sup> March 2006 vide official receipt No. 2810220.
5. The defendant contended that if the respondent was ever allocated the suit property, the allocation was fraudulently obtained hence of no consequence; that his allocation having been the 1<sup>st</sup> in time, was superior to the respondent's allocation and that he had been in use and occupation of the suit property through his agent, Elijah Y. Rotich, from 2000 and not 2008 as alleged by the respondent.
6. By way of a counterclaim the appellant sought judgment against the respondent for:
- i. A declaration that the plaintiff is not entitled to the ownership and occupation, beneficial or otherwise, of all that piece of land known as Mochongoi/Block III/533 (Kimoriot);
  - ii. An order of eviction to remove the plaintiff, his workers, servants, employees, agents and/or those claiming through or under him together with all the plaintiff's developments of whatever nature from all that piece of land known as Mochongoi/Block III/533 (Kimoriot);
  - iii. A perpetual injunction restraining the plaintiff, his workers, servants, employees, agents and/or those claiming through or under him from remaining on, re-entering into, developing, occupying and/or dealing in any way or in any manner whatsoever or howsoever with all or any portion of all that piece of land known as Mochongoi/Block III/533 (Kimoriot);
  - iv. Costs of the suit and the counterclaim;
  - v. Any other or further relief that the court may deem fit to grant.
7. The respondent filed a response to defence and a defence to counterclaim dated 3<sup>rd</sup> May, 2019 in which he reiterated the averments in his plaint.

## Evidence

8. When the case came up for hearing, the respondent testified that he was allocated the suit property by SFT on 7<sup>th</sup> December, 1993. In that regard, he produced a letter dated 7<sup>th</sup> December, 1993 as Pexbt 1. He paid Kshs. 14, 250/- vide receipt number 55976618. He produced the receipt as Pexbt 2. He stated that he was shown the plot by a surveyor. He took possession of the suit property until 2012 when Henry entered the land. He reported the matter at the District Land and Settlement Office. He was given a letter to take to the area chief and the District Officer, Mochongoi. He produced the letter he was given as Pexbt 3.
9. The respondent informed the court that the appellant did not move out. On 20<sup>th</sup> April 2012, he went to the Land and Settlement Office and was given another letter confirming that the suit property belongs to him. He produced the letter, dated 20<sup>th</sup> April, 2012 as Pexbt 4.
10. The respondent informed the court that he went to Mochongoi Police Station for help. The OCS gave him a letter dated 22<sup>nd</sup> March 2016, over malicious damage of his house. He produced the letter as Pexbt 5. He also reported the matter to the National Land Commission. The Commission issued him with a letter dated 5<sup>th</sup> March, 2015 which he produced as Pexbt 6. He was also issued with a letter dated 18<sup>th</sup> March, 2016 by Assistant County Commissioner Marigat Sub County. He produced the letter as Pexbt 7.
11. The respondent urged the court to confirm him as the owner of the suit property.



12. In cross examination, the respondent stated as follows:-

“I applied for the land in 1992 and I was given in 1993. I finished 2-3 years and I started developing. I enter the land in 2002. Refers to exhibit 1. It says that I was to go and construct within 30 days. I didn't built a house but I fenced the land after one year from allocation. I started to build in 2002. I did search and it reads the name Julius Chelimo. I did not know there was another person who had been given the land. The land was reading my name in the register. There is time we went for confirmation. The register is with adjudication officer (shown receipts exhibit 2 dated in 2002). It shows Henry was paid by Julius Chelimo Kaputie. ...The receipt bears my name. It bears the name Kaputie. That name is mine.... Defendant's receipt is not stamped by adjudication. I don't know where he got it from. (Shown Document marked defendant's document 2). The document bears a stamp...When I was shown the plot I was with a person present.

The defendant damaged my properties and I reported. He was charged at Mochongoi but that case did not come to court...I don't know why he was not brought to court...I don't have anything in it like photographs to show what was damaged. The land is 4 acres. It will be upon the court to decide if to divide the land between us. How will they divide my land and I paid for it? I paid Kshs. 14,000/- and he paid Ksh. 2,000/-. If it is to divide the land may be the defendant be given one acre and I 3 acres. If the defendant's documents came from the same office as mine, I don't know”.

13. In re-examination the respondent stated:-

“If the land is divided, I should be given a bigger portion because I paid more money and I stayed in the land for more period and I cleared the land and dug it. He came and occupied it.”

14. Fredrick Chebor PW2, informed the court that he has land in Mochongoi, 518.

15. In cross examination PW2 stated:-

“...Julius got the land before me. I entered my land in 1997. Julius got the land before me...I paid first Kshs. 2000/- and later Kshs. 15000 in total was Kshs.17000/-. I paid around 2012. I saw Henry in Mochongoi on the same land (suit land). If both the plaintiff and the defendant paid the people concerned to solve the issue are the SFT people. It is not my stand that both can co-share the land, it depends on who paid first. There were allotment letters that were issued by the land's office. I cannot give an approval that Henry be given land.”

16. John Ongalo Laku, who testified as DW1 testified as follows:-

“I work as Land adjudication and Settlement Officer...I have the records for Mochongoi/ Block 3/533 Kimoriot Mochongoi was offered from Land Settlement in 1989. The former president Daniel Arap Moi got land to compensate people whose land was taken for construction of Kirandich Dam, other groups of people's land was taken for public utility including the Technical College. Other people living in dry areas were considered to hake a living from agriculture. It was done in 3 blocks. Muchongoi Block 1. It had 1410 people who were given letters of offer. This case relates to Block 3, it had initial allottees of 465. Block 3 was opened in 1992. The other allottees made applications and 1900 were issued with land but it was not confirmed by the government. From 466-1970 are the people in occupation.



According to our records, plot 533 was rendered to Henry Kiprof the defendant (referred to Pexbt 1), he was not given that land. It is common practice after government identifies land for settlements. A settlement committee is set up comprising of land officials, area leaders, for Mochongoi that route was not followed, a D.O Etyang was included. Mr. Marwa didn't have capacity to issue that land, letters offer was to be given. It was given between 1995-2003 not 1993 (referred to Pexbt 3) (Referred to document 4 in the defendant's list of documents). On the two letters, the one dated 22/3/2016 and for Mr. Odhiambo dated 20/4/2012. Odhiambo's letters refers to whom it may concern. The letter dated 22<sup>nd</sup> March 2016 issues an inquiry from Assistant County Commissioner. I give credence to Gitiagi's letter,....Letter dated 22<sup>nd</sup> March 2016-Dexbt 1.....

I have the register that contains the entries for 533. It is owned by Henry Kiprof. I wish to produce it. Register-Dexbt 2. Plot 518 is owned by Joseph Kiplal. I don't have another register in our office.”

17. In cross examination DW1 stated:-

“The document in court is computer generated, the document have a handwritten register, it is a list handed over to the office by Mr. Etyang, I don't know if Mr. Marwa was the District Commissioner, he was a land Adjudicator and Settlement Officer, the allocation of land is done by the Director of Adjudication, there no letter of offer by Henry, after the first allocation form 1-256, the government then decided the additional acres, the allottees would be given. The process of giving them letters of offer is still ongoing, Henry does not have an allotment letter, I have not seen the Plaintiff's allotment letter. (Referred to D-exhibit 2). Henry's name has no ID card in the list, we didn't generate that list, no other Henry has ever come to claim that land, Henry should have his receipts, the standard premium was Kshs.17,777/=. I cannot tell if Henry has paid from our records, a payment of Kshs.14,000/= is not an outright purchase, an allottee takes out the land, thus a process a period of 90 days is given, the Settlement Committee sits and re-allocates the land if not occupied (referred to 534 on list). It doesn't show that the land Adjudication officer has not ticked and the list. It happens when the land is sold to another. We cannot keep the settler on the list if buyer is in occupation, I don't know the letter from the District Officer, Mochongoi (referred to letter dated 18<sup>th</sup> March, 2016). He refers to our letter of 20<sup>th</sup> April, 2022, he also complains of forceful encroachment, the letter shows that there is a dispute on the ground, Martin Odhiambo was working under Mr. Gitiagi in the Lands Settlements Office. The records Gitiagi gave me and handover is the register I have produced, I don't know what records Odhiambo was verifying it, he worked in our office but he had no authority, there is no interference of our records, there are two letters confirming from our office, there is no tinkering of records, we don't have a block's physical register, once a letter of offer is given it tells you to report to the District's Land Adjudication officer, in this case, none of the two has the allotment letter, (referred to P-exhibit 1). I cannot vouch for it since am not the author, Marwa didn't have the power to do so”.

18. In re-examination DW1 stated:-

“Referred to Pexbt 1). The director of lands and settlement has power to allocate land. I cannot even do it. (referred to Dexbt 2). I didn't compile this list. We have not had another Henry laying claim on plot 533.”



19. The defendant who testified as DW2, relied on his witness statement dated 19<sup>th</sup> November, 2018 after it was adopted as his evidence in chief. He produced the documents contained in his list of documents as follows:-
- i. Receipt ....Dexbt 3;
  - ii. Receipt ....Dexbt 4
  - iii. Letter dated 10th April 2014-Dexbt 5
20. The defendant informed the court that plot 533 is his according to the register.
21. On cross examination, DW2 stated as follows:-

“.....(shows ID card to advocate) shows Henry Chelimo Kiprop ID XXXXXX the register shows Henry Kiprop, I was not asked for my ID card during the registration, the person recording wrote Henry Kiprop, he didn't put my ID number, I applied for the plot when I was in Mochongoi, I register the plot with the DC. Hussein Dado, he was in kabarnet, the land is in Mochongoi, I didn't see the name Henry Kiprop and inserted my name there,..... Elijah went to the D.O's office Mochongoi over this land, he paid for the plot for me not himself..... Elijah Rotich was my neighbour, he moved away, (referred to D. exhibit 3). It is dated 8<sup>th</sup> March, 2004, it has no stamp for Land Adjudication. The receipt is genuine (referred to D. exhibit 4). It is dated 8<sup>th</sup> March, 2006, it is a duplicate copy (referred to P. exhibit 2), it has a stamp, I didn't make up my receipt, (referred to D. exhibit 5), I found them for Elijah, he didn't give me the originals, he didn't claim that the plot is his, reference is made of receipt of 8<sup>th</sup> March, 2005, it is for 28<sup>th</sup> December, 2004, the receipts are not superimposed, I got the Assistant County Commissioner's letter in 2014, I met Land Adjudicator, Odhiambo, (referred to letter of 20<sup>th</sup> April, 2016) Odhiambo left and Githaiaga came in, I saw the register in the land's office, it was not hand written, it was typed, the plaintiff's store is on the land, the D.O told me to go plough the land as it is mine, I don't know if the D.O said the plot is the plaintiff's. On 18<sup>th</sup> March 2016, I didn't take advantage, I got the plot in 1994 as a councillor, I don't have a ballot paper, I have plot in Mochongoi, I was a councillor, I was a squatter, I deserved land, Gitiagi authored the letter of 2016, Odhiambo was in the office for a short while before he moved, I went to the Land's office, not all the time, the register shows my names. The register was not changed to reflect my name, since plaintiff also has the name Chelimo, I don't know why my name is not inserted in the register, the register should be followed, there was a dispute between Elijah Rotich and the plaintiff from 2006-2016, Rotich was my neighbour, he ploughed my land, my parents were sick then. He compensated me, he paid for SFT, I don't if the statement of Rotich says it is the plaintiff's land. According to the register, it is my land, I don't know the plaintiff, I have paid Kshs.3527/- according to my receipts, the plaintiff has paid Kshs. 14250/-. He didn't pay the outright purchase price, my intention was not to defraud the plaintiff, I have not lied, I participated in land adjudication, I have never participated in land adjudication, I don't know its processes”

22. In Re-Examination, DW2 stated:-

“The register shows I am Henry Kiprop, I am Henry Kiprop Chelimo. It is the same person. There's no other Henry Kiprop there (shows a register Dexbt 1), it has my ID card. I met Elijah last in 2016-2018 in Nakuru. I paid for the plot (referred to D exhibits 3 and 4). It



has a stamp. I didn't remove the plaintiff from the list. You can't interfere with government record. I didn't prepare the register. It's land officials. I paid Kshs. 3,527/-. I will pay the balance of Kshs.1,450/-. I am waiting to be asked. I will pay. I didn't take advantage of my position as a councillor to acquire the land. (Referred to Dexbt 4). It is dated 8<sup>th</sup> March 2006. There is an error on Pexbt 5. It is not 8<sup>th</sup> March 2005. The correct date is 8<sup>th</sup> March 2006. (Referred to Dexbt 6). The correct date is 28/12/2004.”

23. It was on the basis of the foregoing evidence, the trial court found in favour of the respondent and against the appellant. In so doing, the trial court inter alia stated/held:-

“Upon considering the pleadings, the evidence led and learned counsels’ written submissions, it is not in dispute that the plaintiff’s suit and the defendant’s counterclaim both relate to the acquisition and ownership of the suit land Mochongoi/Kimoriot 533. The following issues arise for determination:-

- i. Whether the suit land was legally acquired by the plaintiff.
- ii. Whether the counterclaim has merit
- iii. Any other remedies.

Issue 1 and 2 are intertwined and will therefore be determined together. Both parties have laid claim to the suit property. I have considered the documents produced in support of both cases. The allotment letter issued to the plaintiff is dated 7/12/93. The letter was duly executed by the plaintiff. Subsequently, the plaintiff made payment of the suit plot on 18/3/06 of Kshs. 14,250 as shown by Exhibit 2. On 20/4/2012 as shown by P Exhibit 3. The district Land Adjudication Officer confirmed that the suit land is registered in the name of the plaintiff.

The defendant on the other hand produced 2 receipts dated 18/12/04 and 8/3/06 to show the payments made towards the suit land. There was no letter of offer that preceded these receipts that were issued to the defendant.

The defendant has also produced a letter dated 22/3/16 from the land adjudication and settlement Office authored by one David Githaiga that showed that the suit land belonged to the defendant.

I have considered the documentary evidence. I have firstly considered the letter of allotment. it states as follows:.....

It clearly shows that the suit land was allocated to the plaintiff who according to the letter was given authority to start developing it and hedge the boundaries.

Whereas DW1 testified that letters of allotment were given between 1995-2003. The defendant did not produce any letter of allotment to show he obtained the land in question.....

It is not clear how the same land could have been allocated to the defendant yet it had already been allocated to the plaintiff.

The letter of offer required the plaintiff moves into the land, start developing it and put a hedge round it. I have considered the letter dated 18/3/2016 authored by the Deputy County Commissioner Marigat Sub County. It shows that the plaintiff complained of forceful encroachment on the land and destruction of property. That letter proves on a balance of probability that the plaintiff had taken over the land and met the conditions in



the letter of offer produced as P Exhibit 1. The defendant's counsel's submissions therefore that the plaintiff had not met the terms of the letter of the offer was not established.....

Upon considering the discrepancies raised in the register produced as D Exhibit 2 and the fact that the defendant did not produce an allotment letter that preceded his payments unlike the plaintiff who did so, I find the defendant's claim of ownership over the suit land has not been established....”

24. Dissatisfied with the decision of the trial court, the defendant, now appellant, appealed to this court on the grounds that the learned trial magistrate erred in law and fact by:-
  1. Totally failing to judiciously evaluate the evidence and the law applicable to the facts in issue thereby grossly misdirecting herself in a manner that occasioned a miscarriage of justice;
  2. Failing to find that it had no jurisdiction to entertain the suit over the property, a property that is still pending under inchoate stages of the adjudication process without the consent of the Land Adjudication Officer as provided under Section 30 of the [Land Adjudication Act](#), Cap 284 Laws of Kenya;
  3. Totally disregarding the essential issues raised by the Assistant Director Land Adjudication and Settlement, one John Ongalo Laku regarding the circumstances of the suit property and treating his evidence as merely expert evidence thereby grossly misdirecting herself in a manner that occasioned miscarriage of justice;
  4. Finding that the respondent was the rightful owner of Mongongoi/Block III/533 on the basis of an allotment letter dated 7<sup>th</sup> December, 1993 without corresponding register that would be the basis for the issuance of such allotment letter;
  5. Failing to find that the Land Adjudication Officer had no capacity and/or authority to issue letter of allotment dated 7<sup>th</sup> December 1993;
  6. Failing to find that a letter of allotment is merely a conditional letter of offer and does not confer conclusive proprietary right of ownership and therefore failure to comply with conditions renders it invalid;
  7. Failing to appreciate, consider and determine the actual description of the suit property and that the respondent's claim was for Mochongoi Block III/533 measuring approximately 2 acres while the appellant's claim was for Mochongoi Block III/533 measuring approximately 5 acres;
  8. Failing to judiciously analyse the testimonies of PW1 and PW2 and failing to address her mind to the glaring inconsistencies in the written and oral testimonies of the plaintiff's witnesses;
  9. Dismissing the defendant's counterclaim without proper evaluation of the evidence on record;
  10. Failing to find that the balance of probabilities was clearly in favour of the respondent.
25. The appellant prays that the appeal be allowed with costs; a declaration that the respondent failed to prove his case against him on a balance of probabilities be made in his favour and a declaration that he is the lawful proprietor of the parcel of land known as Mochongoi/Block III/533 measuring approximately 5 acres be made.
26. The appeal was disposed of by way of written submissions.



## Submissions

### Appellant's submissions

27. In his submissions dated 9<sup>th</sup> July, 2025 filed on 16th September, 2025 the appellant submitted that the trial court turned a blind eye on the evidence on record and ought to have given reasons for either accepting or rejecting the same.
28. He identified the issues for determination to be:
  - a) Whether the trial court failed to judiciously analyse and evaluate the evidence and the law applicable.
  - b) Whether the trial court erred in dismissing the appellant counterclaim.
29. On whether the trial court failed to judiciously analyse and evaluate the evidence and the law applicable, it is submitted that there is inconsistency in the description of the suit property by the respondent as he refers to the suit property as 2 acres on the one hand where he paid Kshs 14,250/- to the settlement Fund Trustee (SFT) in consideration of the allocation and 4 acres on the other hand. The appellant submits that he was allocated 5 acres after payment of Kshs 3,527/- and that he is the genuine allottee. He questions the letter of allotment issued to the respondent produced as Pexbt 1 as it was not rooted in any due process. He argues even if the letter of allotment was to be valid, the respondent's failure to adhere to the conditions attached rendered it invalid. He placed reliance on the case of *Bubaki Investments Company Ltd v National Land Commission & 2 Others (2015) eKLR*.
30. He further submitted that the letter of offer is not genuine because according to the testimony of the County Land Adjudication/Settlement Officer, John Ongalo Laku DW1, the letter is yet to be issued and even if it had been issued, it does not confer any ownership or interest in land and is not a substitute for a title deed. He relied on the Supreme Court case of *Torino Enterprises Ltd v Attorney General (Petition 5 (E006) of 2022) [2023] KESC 79 (KLR) (22 September 2023)* in support of this position.
31. He submitted that before 2010, letters of offer under the settlement scheme were allocated and issued under a clear legal and administrative framework as provided under Section 3 of the Government Lands Act Cap 280, Agriculture Act Cap 31 and *Land Adjudication Act* Cap 284 and that the letter of allotment/offer, Pexbt 1, issued to the respondent by C.E Marwa, the District Land Adjudication/Settlement Officer then, is of no legal consequence or value and therefore untenable.
32. He submitted that the learned trial magistrate erred by treating the evidence of DW1 as expert opinion or evidence. He submitted that DW1 being a Government officer, his role in court was primarily to produce official records or documents kept in the course of public duty and his appearance in court was as a witness of fact rather than an expert. His role was to authenticate and produce official documents and not offer opinion. He referred to Sections 48, 79-90 of the *Evidence Act* and the Black's Law Dictionary.
33. On whether the trial court erred in dismissing the appellant counterclaim, it is submitted that the trial court erred because the appellant has been in occupation of the suit property for over 20 years; that his name is in the official register as one of the allottees of the suit property and the testimony of DW 1 and letter dated 22nd March 2016 by David M Githaiga are in support of their claim; that the letter of offer held by the respondent is disparaged as invalid and should not have been afforded any attention. He urged the court to find in his favour and allow this appeal as he is the lawful allottee and occupant of the suit property.



## Respondent's submissions

34. In his submissions dated 20<sup>th</sup> August 2025, the respondent identified the following to be the issues for determination :
- a. Whether the trial court had jurisdiction to entertain the matter?
  - b. Whether the trial court disregarded the applicant's evidence thereby occasioning miscarriage of justice?
  - c. Whether the trial magistrate erred in finding that the respondent was the lawful allottee and/or owner of the suit property Mochongoi/Kimoriot Block III/533?
  - d. Whether the trial court erred in dismissing the appellant's counterclaim?
35. On whether the trial court had jurisdiction to entertain the matter, it is submitted that the issue of jurisdiction was raised vide a preliminary objection which was dismissed, hence the issue is res judicata. He submitted that the suit property is not under an adjudication area; that it is a registered property charged to the Settlement Fund Trustee, an independent institution established under Section 167 of the repealed Agriculture Act Cap 318; that the Land Adjudication Officer has no role in determining disputes in a settlement scheme where titles are already registered and charged to SFT awaiting outright purchase by the allottees, therefore, the court had jurisdiction to entertain the suit.
36. On whether the trial court disregarded the evidence thereby occasioning miscarriage of justice, the respondent submitted that the trial court addressed itself to the claims made by the appellant and his dissatisfaction with the judgment does not mean his evidence was disregarded. It is argued that a trial court need not lay out in detail every evidence considered so long as it gives reasons why it found in favour of a party. They relied on the cases of *Mwanasokoni v Kenya Bus Services Ltd* (1985) KLR 931 and *Makube v Nyamuro* (1983) KLR 403.
37. On whether the trial magistrate erred in finding that the respondent was the lawful allottee and/or owner of the suit property Mochongoi/Kimoriot Block III/533, the respondent submitted that he has a valid letter of allotment, proof of acceptance through payments of requisite SFT premiums and has been in possession and use of the suit property from 1992 until 2008 when a third party laid claim to it. The finding that he was the lawful allottee of the suit property was founded on sound principles of the law supported by cogent evidence. The respondent relied on the cases of *Kwale ELC 109 OF 2021 George Stephen Njoroge Macharia & Hamadi Omar Saidi & 2 others* cited in the case of *Benja Properties Limited v Syedna Mohammed Burhannudin Sahed & 4 others* (2015) eklr.
38. He further submitted that the appellant's claim to the suit property is hollow as he failed to produce any allotment letter and or a demand notice from SFT demanding for payment of loan arrears to redeem the property. It is submitted that even if the the appellant was allocated the suit property, his failure to pay the premium if any was an automatic rejection of the alledged offer hence his claim to the suit property has been extinguished. It is further submitted that the trial court detected and/ or discerned the abnormalities in evidence of the appellant and properly addressed itself in finding that the respondent was the lawful allottee.
39. On whether the trial court erred in dismissing the appellant's counterclaim, it is submitted that the trial court found that the appellant had failed to prove ownership of the suit property as he had no allotment letter save for a payment receipt of 3,500/= paid by a third party; that the trial court correctly found that the computer generated list was not authentic as it contained numerous changes and or crosses made by hand. It is their contention that there is no way the appellant could have made an



application for allocation without an identity card. The respondent asserts that the trial court was sound in its judgment and urges the court to dismiss the appeal with costs.

### **Analysis and determination**

40. In exercise of the duty vested in this court as a first appellate court, I have re-evaluated the evidence adduced before the lower court with a view of reaching my own conclusion on it. I have reminded myself that a first appellate court will not ordinarily interfere with findings of fact by the trial court unless they were based on no evidence at all, or were based on misapprehension of the evidence or unless it is demonstrated that the trial court acted upon wrong principles in reaching the finding. In that regard see *Selle & Another vs. Associated Motor Boat Co. Ltd* (1968)E.A 123 and *Mwanasokoni vs. Kenya Bus Service Ltd* (1982-88)1 KAR and *Kiruga vs. Kiruga & Another* (1988)KLR 348.
41. A review of the pleadings filed in the lower court, in particular the plaint, dated 13<sup>th</sup> April 2016, shows that the respondent sought an order of permanent injunction restraining the defendant, now appellant, his servants and/or agents or any other person claiming through him from entering, trespassing, dealing with and/or alienating his parcel of land known as Mochongoi Block III-Kimoriot/533 (suit property). The respondent also prayed that he be declared the lawful owner of the suit property.
42. As can be discerned from the averments/ contentions in the plaint, the respondent's suit/claim was based on the following grounds:-
  - i. That on or about 2006, he applied to the settlement fund trustee to be allocated a parcel of land in Mochongoi Block III-Kimoriot/533 measuring two (acres) or thereabouts;
  - ii. That after the allocation, he paid the allocation fees of Kshs.14,250/- to the settlement fund trustee and was shown his plot by the land adjudication officer, took possession and developed it;
  - iii. That in 2008, a third party came to the suit property and purported that the parcel of land was his even though the payment receipt he was holding had the name of a different party;
  - iv. That he reported the third party's allegation to the settlement fund trustee who ruled in his favour;
  - v) That in 2012, the defendant laid a claim to the suit property and once again he referred the defendant's allegation to the District Land Adjudication and Settlement Officer who confirmed that he was the lawful owner.
  - vi) The respondent lamented that on 5<sup>th</sup> April 2016, the defendant, now appellant, trespassed on his land and attempted to forcefully evict him from the suit property thereby disrupting his developments.
43. When the case came up for hearing, the plaintiff led evidence which largely corresponds with his pleaded case. The only glaring difference between the appellant's pleaded case and his evidence is that, whereas he pleaded that he was allocated the suit property in 2006 or thereabout, he produced a letter of allotment (Pexbt1), dated 7<sup>th</sup> December, 1999 which shows that he was allocated the suit plot much earlier.
44. According to the evidence produced in the lower court comprised in payment receipts dated 18th March, 2006 (Pexbt 2) the respondent paid Kshs. 14, 250/- as the last instalment for the suit property. The receipt bears the stamp of the District Land adjudication Officer.



45. The respondent produced a letter dated 20<sup>th</sup> April, 2012 (Pexbt 3), from the office of the District Land Adjudication/Settlement Officer Baringo land adjudication area certifying and confirming that he was the registered owner of the suit plot.
46. It is noteworthy that the letter of allotment produced in evidence merely required the respondent to hedge the boundaries of the plot within 30 days failing which he would forfeit it. There were no other terms attached to the letter of allotment.
47. In his statement of defence and counterclaim, the appellant inter alia pleaded that he was lawfully allocated the suit property, Mochongoi Block III/533 sometime in the year 1999; that upon being allocated the suit property, he took possession of it through his agent, Elijah Rotich, and made payment to the Government as follows:-
  - a. Kshs. 2,027/- on 28<sup>th</sup> December 2004 vide official receipt No. 2149367;
  - b. Kshs. 1,500/- on 8<sup>th</sup> March 2006 vide official receipt No. 2810220.
48. Whereas the appellant pleaded that he was allocated the suit property in 1999, unlike the respondent who produced a letter of allotment showing that he was allocated the suit property, the appellant did not lead any evidence capable of showing that he was indeed allocated the suit property in 1999 as he claimed and if at all he was allocated the property, on what terms or conditions.
49. In support of his claim that he was allocated the suit property and that he complied with the terms of the offer, the appellant relied on payment receipts dated 28<sup>th</sup> December, 2004 and 8<sup>th</sup> March, 2006 which show that he paid Kshs. 2,027/- and Kshs.1,500/- respectively.
50. Although there is no evidence or document capable of showing how much the appellant was supposed to pay in respect of the allotment, he admitted that he had not fully paid the amount he was required to pay in respect of the allotment.
51. The question that arises from the totality of the evidence adduced by the appellant is whether the appellant can sustain his claim to the suit property in the absence of any letter of allotment showing that he was indeed allocated the suit property and he complied with the terms of the letter of offer. My answer to that question is that he cannot.
52. The case presented before the lower court turned on who between the respondent and the appellant had a better claim to the suit property, based on their claim that they were allocated the suit property.
53. Although the register of allottees produced by the Land Adjudication Officer showed that the appellant is the registered allottee of the suit property, the totality of the evidence adduced before the lower court shows that the suit property was allocated to the respondent and that he made payment in respect thereof leading to issuance of a payment receipt showing that he had finished paying the consideration in respect thereof.
54. Despite being the registered allottee, nothing was presented before the court capable of showing that the appellant was indeed allocated the suit property, the conditions if any, attached to the allocation and that he fully fulfilled his obligations in respect thereof, to warrant being declared the lawful owner of the suit property.
55. The upshot of the foregoing is that I find the appellant's appeal to be lacking in merit and I dismiss it with costs to the respondent.
56. Orders accordingly.



**DATED, SIGNED AND DELIVERED THIS 4<sup>TH</sup> DAY OF NOVEMBER, 2025.**

**L. N. WAITHAKA**

**JUDGE**

Judgment delivered virtually in the presence of;-

Mr. Songoyo for the Appellant.

Mr. Chebii for the Respondent.

Court Assistant: Ian.

