

prepare and issue the relevant title document[s] in the name of the 1st respondent.

2. It is the said Judgment and the consequential decree which has aggrieved the appellant and thus provoking the subject appeal. The appellant has filed the memorandum of appeal dated 2nd November 2024 and wherein same has highlighted various grounds. The grounds contained at the foot of the memorandum of appeal are reproduced as hereunder:

- (i) *That the learned trial magistrate erred in law and fact by failing to find that the allotment letter dated 14/1/1993 and issued to the 1st respondent was merely an offer and that the offer was subject to conditions inter alia acceptance within 30 days, submission of building plans within 6 months and payment of the necessary levies to the local authority which conditions the 1st respondent failed to comply with within the set timelines.*
- (ii) *That the learned trial magistrate erred in law and fact by failing to find that the offer granted to the 1st respondent and communicated vide the allotment letter dated 14/1/1993 lapsed automatically once the 1st respondent failed to comply with the special conditions attached to the offer.*
- (iii) *That the learned trial magistrate erred in law and fact that by failing to find that the letter of allotment dated 14/1/1993 issued to the 1st respondent was invalid and could not confer any proprietary rights to the 1st respondent on account of failure by the 1st respondent to comply with the conditions of the offer.*
- (iv) *That the learned trial magistrate erred in law and fact by misconstruing the letter dated 12/3/2015 and giving undue*

regard to it, whereas the said letter could not revive or validate the letter of allotment dated 14/1/1993.

- (v) That the learned trial magistrate erred in law and fact by failing to find that once the offer granted to the 1st respondent lapsed, the plot was available for re-allocation and that the appellant had lawfully and procedurally acquired ownership of the plot.*
- (vi) That the learned trial magistrate erred in law and fact by failing to properly evaluate the evidence tendered by the appellant and which showed that the appellant lawfully and procedurally acquired the disputed plot.*
- (vii) That the learned trial magistrate erred in law and fact by ignoring the uncontroverted evidence that the plot claimed by the 1st respondent was registered in the name of Leonora Nakungu who was not a party to the suit and therefore the suit was incompetent to that extent. That the learned trial magistrate erred in law and fact by ignoring the glaring evidence that the plots claimed by the 1st respondent and the appellant were separate and distinct and therefore the 1st respondent's claim was incompetent to that extent. That the learned trial magistrate erred in law and fact by ignoring the submissions and authorities tendered by the appellant, which were instructive on the issues that were before the court for determination.*
- (viii) That the Judgment of the learned trial magistrate is against the law and the weight of evidence on record.*

3. The subject appeal came up for directions on 24th September 2025, whereupon the advocate for the appellant confirmed that same had filed and served the record of appeal. Furthermore, learned counsel intimated to the court that the record of appeal was complete and thus the appeal was ready for hearing. Additionally, learned counsel for the appellant sought directions as pertains to the hearing and disposal of the appeal.
4. With the concurrence of learned counsel for the 1st respondent, the court proceeded to and issued directions. The court ordered that the subject appeal be canvassed and disposed of by way of written submissions. Moreover, the court also circumscribed the timelines for the filing and exchange of the submissions.
5. The appellant filed written submissions dated 27th October 2025; and wherein same has highlighted three key issues. The issues highlighted by the appellant are, namely; whether the 1st respondent ever acquired the ownership of plot No. 1 Tullu Roba – Isiolo; whether the 1st respondent proved her claim against the appellant; and whether the appellant is entitled to the prayers sought or otherwise.
6. Regarding the first issue, learned counsel for the appellant has submitted that although the 1st respondent contended that same is the lawful owner and proprietor in respect of plot No. 1 Tullu Roba – Isiolo [hereinafter referred to as the suit property], same failed to tender/adduce credible evidence to demonstrate her entitlement thereto. Moreover, it was submitted that the letter of allotment which the 1st respondent relied upon in her endeavor to prove ownership in respect of the suit property, relates to a separate and distinct plot. For good measure, learned counsel for the

appellant invited the court to take note of the fact that the letter of allotment relates to plot number unsurveyed residential plot 1 – Isiolo; and not the suit property.

7. Furthermore, learned counsel for the appellant has submitted that the 1st respondent failed to tender and adduce evidence to demonstrate the nexus between the suit plot and the plot referenced at the foot of the letter of allotment dated 25th September 1996. In this regard, it was submitted that the documentation that was tendered by the 1st respondent was at variance with the pleadings.
8. It was the further submission by learned counsel for the appellant that even assuming that the letter of allotment relied upon by the 1st respondent was in respect of the suit property [which is disputed], learned counsel has contended that the letter of allotment lapsed for want of compliance with the terms thereof. In this regard, it has been posited that once the impugned letter of allotment lapsed, the 1st respondent cannot purport to anchor her claim to the suit property on the said letter of allotment.
9. In support of the foregoing submissions, learned counsel for the appellant has cited and referenced the holding in the case of **Mbau Saw Mills Ltd vs The Attorney General (2014) eKLR and Bubaki Investment Co. Ltd vs National Land Commission and two others (2015) eKLR**, respectively.

10. Secondly, learned counsel for the Appellant has submitted that the appellant herein tendered and produced before the court documents to show and or demonstrate that same was lawfully allocated plot number 3A Tullu Roba – Isiolo. Moreover, learned counsel has submitted that the appellant's plot is distinct from the plot being claimed by the 1st respondent. In this regard, it has been submitted that the learned trial magistrate erred in finding and holding that the appellant had trespassed onto the suit property and decreeing eviction.

11. It was the further submission by learned counsel for the appellant that the appellant also tendered evidence to show that the plot being claimed by the 1st respondent, namely; plot no. 1 Tullu Roba belongs to and is registered in the name of Leonora Nakhungu and not otherwise. In this regard, it has been contended that the 1st respondent did not establish her claim over and in respect of the suit property.

12. Turning to the third issue, learned counsel for the appellant has submitted that the appellant clearly proved/established her rights/entitlements to plot No. 3A Tullu Roba – Isiolo. In any event, it was submitted that the moment the 1st respondent failed to comply with the terms of the letter of allotment, the property at the foot of the letter of allotment became available for allotment or alienation.

13. In the premises, learned counsel for the Appellant has submitted that the appeal, beforehand, is meritorious. To this end, the court has been implored to allow the appeal; set aside the impugned judgment; and thereafter dismiss the first respondent's suit in the subordinate court.

14. The 1st respondent filed written submissions dated 3rd November 2025; and wherein same has reiterated the evidence that was tendered by the 1st respondent in the subordinate court and thereafter supported the judgment of the learned chief magistrate. Furthermore, learned counsel for the 1st respondent has contended that the grounds of appeal raised by the appellant are *devoid* of merits.

15. Additionally, learned counsel for the 1st respondent has submitted that the 1st respondent tendered and produced before the trial court clear evidence showing that same was invited for balloting and thereafter issued with a letter of allotment. Moreover, learned counsel has submitted that the 1st respondent proceeded to and complied with the terms of the letter of allotment, including issuing a letter of acceptance and making payments on account of standard premium. For good measure, it was posited that the totality of the evidence tendered by the 1st respondent was sufficient to warrant the finding by the learned trial magistrate.

16. Secondly, learned counsel for the 1st respondent has also submitted that though the appellant contends that same is the owner/proprietor of plot Number 3A Tullu Roba, it has been submitted that the claims to that effect are mistaken and legally untenable. In particular, learned counsel has referenced the letter dated 12th March 2013 from the National Land Commission which it is contended, clearly stated that the appellant's plot NO. 3A should be nullified from the register.

17. Finally, learned counsel for the 1st respondent has submitted that the learned trial magistrate found and held that the appellant herein did not participate in the ballot and hence same could not have been allocated plot No. 3A Tullu Roba. Moreover, it has been submitted that the appellant was not able to prove the root of her title. In addition, it has been submitted that the appellant herein purports to have bought her plot from one Patrick Njagi, who had no title capable of being sold and conveyed to the appellant.

18. Consequently, and in view of the foregoing, it has been submitted that the appellant herein has no legitimate claim to the suit property. To this end, the court has been invited to find and hold that the instant appeal is bereft of merit[s] and thus same ought to be dismissed.

19. In support of the submissions that the appellant has neither established nor proved the root of her title, learned counsel for the 1st respondent has cited and referenced the case of **Jattani vs Jattani (2025) KEELC 5019; Presbyterian Foundation vs Kibera Siranga Self-Help Group Nursery School KECA 371 and Golicha vs Sora (2025) KEELC**, respectively.

20. The rest of the respondents neither filed any written submissions nor participated in the proceedings. For good measure, the only submissions on record are the ones filed by the appellant and the 1st respondent, and whose details have been highlighted in the preceding paragraphs.

21. Having reviewed the record of appeal; the evidence tendered [*both oral and documentary*]; and upon consideration of the written submissions by/on behalf of the parties, I come to the conclusion that the determination of the subject appeal turns on one key issue, *namely*; whether the 1st respondent established/proved her claim as pertains to ownership of the suit property and whether the reliefs that were granted by the subordinate court were merited or otherwise.

22. Before venturing to address the singular issue, it is important to underscore that what is before me is a first appeal. By virtue of being a first appeal, this court is vested with the mandate and authority to subject the entire evidence to fresh and exhaustive scrutiny and evaluation in an endeavor to discern whether the conclusions arrived at by the learned trial magistrate accord with the evidence. Moreover, the court is also seized of jurisdiction to arrive at an independent conclusion and, where appropriate, to depart from the findings or the trial court.

23. Nevertheless, it is important to underscore that even though the court is seized of the jurisdiction to depart from the factual and legal conclusions arrived at by the trial court, such departure can only be undertaken where it is shown that the findings/conclusions were arrived at on the basis of no evidence; were perverse to the evidence on record; were based on misapprehension of the evidence on record; or where it is shown that the trial court committed an error of principle which vitiates the findings under reference. Simply put, the first appellate court cannot depart from the findings and conclusions of the trial court at will.

24. The jurisdictional remit of the 1st appellate court has been the subject of various pronouncements by the Court of Appeal. In the case of *Kenya*

Urban Roads Authority & another v Belgo Holdings Limited (Civil Appeal E011 of 2021) [2025] KECA 764 (KLR) (9 May 2025) (Judgment) the court stated thus;

*37. We have considered the appeal and this being a first appeal, we are under a duty to subject the entire evidence and the judgment to a fresh and exhaustive examination with a view to reaching our own conclusions in the matter. In carrying out this duty, we have to remember that we had no opportunity of seeing and hearing the witnesses who testified during the trial and to make an allowance for the same. We have also to remember that it is a big thing to overturn the findings of a trial court which has had the singular opportunity of reaching its conclusions based on a combination of the evidence adduced and observation by the court of the demeanour of witnesses. In a nutshell, a first appellate court must of necessity proceed with caution in deciding whether or not to interfere with the findings of a trial court, but of course where such findings are not supported by the evidence on record or where they are founded on a misapprehension of the law, the axe must fall on the impugned judgement. This position is anchored in section 78 of the [Civil Procedure Act](#), which requires a first appellate court to re-evaluate, reassess and reanalyse the extracts of the record and draw its own conclusions. These provisions have been underscored in numerous decisions of the Superior Courts, among them *Peters v Sunday Post Limited* [1958] EA 424, where the predecessor to this Court expressed itself as follows:*

“Apart from the classes of case in which the powers of the Court of Appeal are limited to deciding a question of law, an appellate court has jurisdiction to review the record of the evidence in

order to determine whether the conclusion originally reached upon that evidence should stand; but this jurisdiction has to be exercised with caution. If there is no evidence to support a particular conclusion (and this really is a question of law), the appellate court will not hesitate so to decide. But if the evidence as a whole can reasonably be regarded as justifying the conclusion arrived at on conflicting testimony by a tribunal which saw and heard the witnesses, the appellate court will bear in mind that it has not enjoyed this opportunity and that the view of the trial Judge as to where credibility lies is entitled to great weight.

This is not to say that the Judge of first instance can be treated as infallible in determining which side is telling the truth or is refraining from exaggeration. Like other tribunals, he may go wrong on a question of fact, but it is a cogent circumstance that a judge of first instance, when estimating the value of verbal testimony, has the advantage (which is denied to the courts of appeal) of having the witnesses before him and observing the manner in which their evidence is given...

Where a question of fact has been tried by a judge without a jury, and there is no question of misdirection of himself, an appellate court which is disposed to come to a different conclusion on the printed evidence, should not do so unless it is satisfied that any advantage enjoyed by the trial Judge by reason of having seen and heard the witnesses, could not be sufficient to explain or justify the trial Judge's conclusion. The appellate court may take the view that, without having seen or heard the witnesses, it is not in a position to come to any satisfactory conclusion on the printed

evidence. The appellate court, either because the reasons given by the trial Judge are not satisfactory, or because it unmistakably so appears from the evidence, may be satisfied that he has not taken proper advantage of his having seen and heard the witnesses, and the matter will then become at large for the appellate court. It is obvious that the value and importance of having seen and heard the witnesses will vary according to the class of case, and, it may be, the individual case in question...It not infrequently happens that a decision either way may seem equally open and when this is so, then the decision of the trial Judge who has enjoyed the advantages not available to the appellate court becomes of paramount importance and ought not be disturbed.

This is not an abrogation of the powers of a Court of Appeal on questions of fact. The judgment of the trial Judge on the facts may be demonstrated on the printed evidence to be affected by material inconsistencies and inaccuracies, or he may be shown to have failed to appreciate the weight or bearing of circumstances admitted or proved or otherwise to have gone plainly wrong.” [see also the holding of the court of appeal in the case of County Government of Bungoma & 2 others v JOO & 2 others (Civil Appeal 61 of 2018) [2024] KECA 1377 (KLR) (23 February 2024) (Judgment)]

25. Back to the issue for consideration. It is imperative to underscore that the 1st respondent is the one who approached the subordinate court, contending that same is the lawful owner and proprietor of plot number 1 – Tullu Roba – Isiolo [herein after referred to as the suit property]. To the extent that the 1st respondent contended that same was the lawful owner and proprietor of the suit property, same was obliged to tender and

place before the subordinate court evidence to demonstrate ownership or entitlement to the suit property.

26. Simply put, the burden of proving the assertions contained at the foot of the amended Plaintiff dated 12th April 2019; lay on the shoulders of the 1st respondent. For good measure, the provisions of **sections 107, 108 and 109 of the Evidence Act, Cap 80 Laws of Kenya**, are apt and succinct. In this regard, it behooved the first respondent to place before the subordinate court plausible; cogent; consistent; and concrete evidence underpinning allotment of the suit property and compliance with the terms of the letter of allotment.

27. Did the 1st respondent discharge the burden of proof? To start with, it is crystal clear that the suit property is described as plot NO. 1 Tullu Roba – Isiolo. In this regard, it was incumbent upon the 1st respondent to tender and place before the subordinate court evidence to show that the suit plot was duly allocated unto her. Unfortunately, even though the 1st respondent had contended that same had been invited to ballot, no evidence was tendered to demonstrate that the 1st respondent indeed participated in the balloting, and if so, the outcome of the balloting.

28. It is instructive to highlight that the 1st respondent ought to have tendered and produced before the court the notification of allotment of [sic] the suit plot if at all. Notably, the balloting ought to have birthed results and the results of balloting would be manifested in terms of some documents, to be escalated to the County Council of Isiolo [now defunct] and thereafter to the commissioner of lands.

29. Additionally, it is also important to point out that though the 1st respondent tendered and produced the letter of allotment dated 14th January 1993, the said letter of allotment relates to unsurveyed residential 1 – Isiolo. To start with, no evidence was tendered to connect the said letter of allotment to the suit property. On the face of it, the letter of allotment references a separate and distinct plot from the one which has been impleaded. This disconnect was neither explained nor accounted for.

30. Furthermore, it is imperative to highlight that the letter of allotment which the 1st respondent referenced and relied upon to propagate her claim before the subordinate court, contains special terms/conditions. Pertinently, the 1st respondent was obligated to accept the terms of the letter of allotment and to pay the standard premium [if at all] within 30 days. Suffice it to point out that where the terms of the letter of allotment are not timeously complied with, the impugned letter of allotment lapses and becomes extinct in the eyes of the law. [See the holding in the case of *Mbau Saw Mills Ltd vs the Attorney General (2014) eKLR*, *Bubaki Investment Co. Ltd vs National Land Commission and 2 others (2015) eKLR*; *Joseph Muhoro Kimani vs the Attorney General (2021) eKLR* and *Torino Investment Limited vs The Attorney General (2023) KESCI*].

31. The letter of allotment which the 1st respondent relied upon was issued on 14th January 1993. The letter of acceptance generated by the 1st respondent is shown to have been issued on 31st August 1994. The payments in respect of the standard premium were made on 30th August 1994. Quite clearly, the letter of acceptance and the payment of the

standard premiums were made well beyond the stipulated 30 days. The question that does arise is whether the belated letter of acceptance and the belated payments would suffice to resuscitate the extinct [extinguished] letter of allotment?

32. In the case of **Dr. Syedna Mohammed Burhannuddin Saheb & 2 others vs Benja Properties & 2 others [2007] eKLR**, the court [Visram J – as he then was] stated as hereunder;

“ In any event, the letter of allotment relied upon by the Defendant had itself expired, and was therefore invalid. I do not accept Mr. Kirundi, Counsel for Defendant’s argument, that the expired letter, when acted upon, had been “revived” through conduct. The letter had expired. It was dead. There was nothing to “revive”.

33. Moreover, the court of appeal in the case of **Waterfront Holdings Limited v Kandie & 2 others (Civil Appeal 88 of 2019) [2023] KECA 1223 (KLR) (6 October 2023) (Judgment)** also had occasion to deliberate on the legal implication of a letter of allotment whose terms were neither complied with nor adhered to within the prescribed timelines. The court stated as hereunder;

From the foregoing, the legal position is not that once issued, the letter of allotment lasts indefinitely. There must be an acceptance of the offer to allot the land by the allottee fulfilling the conditions specified for the said allotment. To that extent, we associate ourselves with this Court’s decision in Fidelity Commercial Bank Limited v Kenya Grange Vehicle Industries Limited [2017] eKLR which express the general law in contractual matters. “It is elementary learning that for there to be

a contract, there has to be an acceptance of an offer on the same terms of the offer and such acceptance must be unconditional, unequivocal and absolute, accompanied by consideration."

55. The question however is whether the failure to comply with the requirement for payment of stand premium automatically cancels the offer or something more is required to be done by the allotting authority to denote that cancellation. To answer this question, we need to interrogate the legal status of the letter of allotment. The Supreme Court in Torino Enterprises Limited v Attorney General (Petition 5 (E006) of 2022) [2023] KESC 79 (KLR) (22 September 2023) (Judgment), while dealing with the issue, expressed itself as hereunder: "[58]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...

60. Suffice it to say that an Allottee, in whose name the allotment letter is issued, must perfect the same by fulfilling the conditions therein. These conditions include but are not limited to, the payment of a Stand Premium and Ground Rent within prescribed timelines. But even after the perfection of an allotment letter through the fulfilment of the conditions stipulated therein, an allottee cannot pass valid title to a third party unless and until he acquires title to the land through registration under the applicable law. It is the act of registration that confers a transferable title to the registered proprietor, and not the possession of an Allotment Letter....61....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.

62. Back to the facts of this case, the Allotment Letter issued to Renton Company Limited was subject to payment of stand premium of Kshs. 2,400,000.00, annual rent of Kshs. 480,000.00 amongst others. Moreover, the letter was granted on condition that Renton Company Limited would accept it within thirty (30) days from the date of the offer, failure to which it would be considered to have lapsed.⁶³ While the allotment letter is dated 19th December 1999, Renton Company Limited made the specified payments on 24th April 2001, one hundred and twenty seven (127) days from the date of the offer. It is not in question that Renton had not complied with the terms and conditions of the Allotment Letter. Therefore, the letter ought to have been deemed as lapsed at the time it purported to transfer the same to the appellant. The respondent submitted that a Letter of allotment does not confer any property rights unless it is perfected, failure to which it is rendered inoperative and of no legal import. We have already declared that an Allotment Letter, even if perfected, cannot by and in itself confer transferable title to the Allottee, unless the latter completes the process by registration. Therefore, the grim reality is that all transactions between Renton Company Limited and the appellant were a nullity in law.”

34. Flowing from the foregoing, there is no gainsaying that by the time the 1st respondent was purporting to accept the terms of the letter of allotment and to [sic] make payments on account of standard premium, the letter of allotment had ceased to exist. Same was extinct and dead.

35. The learned chief magistrate ought to have interrogated the legal import and tenor of the impugned letter of allotment. However, the learned chief magistrate paid scant attention to the legality and validity of the impugned letter of allotment. Moreover, the learned chief magistrate proceeded on the basis that the letters which were issued *ex-post facto* [well after the lapse] the extinction of the letter of allotment, sufficed to authenticate the 1st respondent's ownership of the suit property.

36. To this end, it is important to reproduce the crux [substratum] of the holding of the learned chief magistrate.

37. Same stated as hereunder;

“During her testimony, PW 1 adduced a copy of a ballot card, a copy of a letter from the district plot allocation committee dated 14th February 1992 addressed to her on the balloting for plots, letter of allotment dated 14th January 1993 referenced unsurveyed residential plot 1 – Isiolo, copy of the letter dated 31st August 1994 to the commissioner of lands, bundle of payment receipts in regard to the plot, a letter from the county council of Isiolo to Mr. Njagi dated 3rd July 1996 who had illegally occupied the plaintiffs land, a copy of the letter dated 25th September 1996 from the department of lands in which they accepted the plaintiffs request for survey. Letter from survey of Kenya dated 25th October 1996 to the district surveyor – Isiolo in respect to the plaintiff’s plot No. 1, a letter

dated 3rd September 2013 from Isiolo county government declaring that plot NO. 1 T/Roba belongs to Susan K Munyua – The plaintiff, a letter dated 27th December dated 2013 from Isiolo County Government confirming that plot No. 1 Tullu Roba belongs to Susan Kinya Munyua and letter dated 12th March 2013 from National Land commission confirming that plot No. 1 tullu Roba estate belongs to Susan Kinya Munyua vide a letter of allotment reference 31560 dated 14th January 1993.

38. Flowing from the foregoing observation, the learned chief magistrate proceeded to and held thus;

All this piece of evidence controvert the averments of the defendant when they submitted that the plaintiff did not comply with the condition on the letter of allotment hence her allotment was revoked.

39. What I hear the learned chief magistrate to be saying is that the *ex post facto* actions which were taken by the 1st respondent; and the letters referenced were able to validate the impugned letter of allotment. Furthermore, I hear the learned chief magistrate to be saying that the letter of allotment remained alive despite the failure by the 1st respondent to comply with the conditions/ stipulation[s] thereunder.

40. With respect, I do not agree with the exposition of the law by the learned chief magistrate. In my humble view, the letter of allotment which was referenced by the 1st respondent and which essentially underpins her claim to the suit property, lapsed and ceased to exist. The said letter of allotment was not revoked, but same was rendered redundant by operation of the law. The impugned letter of allotment became void and

invalid. Same could not and cannot anchor any declaration of ownership in favour of the 1st respondent.

41. Other than the foregoing, it is also important to recall that the 1st respondent was also asking the subordinate court to order and direct the 3rd and 4th defendants [namely] the county surveyor – Isiolo County and the county physical planner – Isiolo County to prepare all the relevant title documents in the names of the plaintiff upon payment of the requisite government charges.

42. It is evident that the 1st respondent was acknowledging that same does not have the requisite title documents to underpin ownership of the suit property. If the 1st respondent was not in possession of title documents [in fact same is searching for title documents] then on what basis can a declaration issue that the 1st respondent is the lawful proprietor of the suit property?

43. To my mind, the declaration that was made in favour of the 1st respondent pertaining to ownership of the suit plot, was made on the basis of a misapprehension of the evidence on record. Simply put, the declaration was made in a *vacuum*.

44. Before concluding on this issue, it is imperative to take cognizance of the holding in the case of **Wreck Motor Enterprises v Commissioner of Lands & 3 others [1997] eKLR** the Court of Appeal stated and observed as hereunder;

“Title to landed property normally comes into existence after issuance of a letter of allotment, meeting the conditions stated in such a letter and actual issuance thereafter of title document pursuant to provisions held.”

45. *In a nutshell*, I come to the conclusion that the Judgment of the learned chief magistrate is not legally tenable, taking into account the plethora of decisions from the Supreme Court and the court of appeal, which have highlighted the legal implications attendant to a letter of allotment whose terms have lapsed for non-compliance.

46. In the premises, and taking into account the legal principles espoused in the case of ***Peters vs Sunday Post Ltd (1958) E.A; and Jabane vs Olenja (1986) eKLR***, respectively; I am minded to and do hereby depart from the findings and conclusions of the learned chief magistrate. I do so with due respect and deference.

FINAL DISPOSITION

47. Flowing from the analysis in the body of the Judgment, it is apparent that the subject appeal is meritorious. In this regard, the appeal is successful and the final orders of the court are as hereunder;

- (i) The Appeal be and is hereby allowed.**
- (ii) The Judgment of the trial court dated 22nd October 2024; and the consequential decree arising therefrom be and are hereby set aside.**

- (iii) In lieu thereof, the Judgment is substituted with an order dismissing the 1st respondent's suit *vide* amended Plaintiff dated 12th April 2019.
- (iv) Costs of the appeal be and are hereby awarded to the Appellant only.
- (v) The Appellant shall also have costs of the proceedings in the subordinate court.
- (vi) The Costs in terms of clause [iv] and [v] shall be agreed upon and in default, be taxed/assessed in the conventional manner.

48. It is so ordered.

**DATED, SIGNED AND DELIVERED AT ISIOLO THIS
20TH DAY OF NOVEMBER 2025.**

OGUTTU MBOYA, FCI Arb, CPM [MTI].

JUDGE.

In the presence of:

Hussein/Mukami – Court Assistants

Mr. Kariuki for the Appellant

Mr. Mwanzia for the 1st Respondent

No appearance for the 2nd Respondent

No appearance for the 3rd Respondent

No appearance for the 4th Respondent