



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ELC CIVIL CASE NO. 62 OF 2017

[Originally Milimani ELC Civil Case No. 1078 of 2015]

BETWEEN

NANCY KAMENE MAINGI
.....PLAINTIFF

VERSUS

JOSEPHINE MWIKALI NGUMBAU1ST
DEFENDANT

THE REGISTRAR OF TITLES, NAIROBI.....2ND
DEFENDANT

NATIONAL LAND COMMISSION.....3RD
DEFENDANT

THE DIRECTOR OF SURVEY, NAIROBI4TH
DEFENDANT

THE CHIEF LAND REGISTRAR, NAIROBI.....5TH
DEFENDANT

HON. ATTORNEY GENERAL6TH
DEFENDANT

THE DISTRICT LAND REGISTRAR

MACHAKOS COUNTY7TH
DEFENDANT

AND BY COUNTERCLAIM

JOSEPHINE MWIKALI NGUMBAU1ST
PLAINTIFF

VERSUS

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DEFENDANT

THE DISTRICT LAND REGISTRAR
MACHAKOS COUNTY7TH
DEFENDANT

JUDGMENT

1. This is one of the plethora of cases of double allocation of land that have persistently been filed before this court for ages. Such cases are a mockery of the Torrens system, which,

amongst others, anticipates that the land register wholly and accurately reflects the current facts about the title of each registered land, and that one need not go behind the certificate of title to scrutinise its root, as it contains all the information about the title.

2. Unfortunately, sometimes title documents can lose their significance because of issues like insatiability, fraud, corruption, complacency, and manipulation of land records by certain individuals seeking personal gain, often at the expense of the rightful owner. In these challenging situations, the court needs to step in and carefully decide which title should be recognised and upheld, ensuring fairness and justice.
3. In this case, the plaintiff's title, **Mavoko/Municipality Block 7/117 (allegedly originally Mavoko Municipality L.R. No. 337/1008) ("Block 7/117")**, conflicts with the land of the 1st defendant's land, **Mavoko Municipality L.R. No. 337/1008("337/1008")**. Since both refer to **Mavoko Municipality L.R. No. 337/1008**, we will henceforth refer to them as the **"disputed land."** The other defendants are either government agencies involved in issuing documents that confer title to land or their legal representatives. We shall now proceed to summarise the parties' respective pleadings.
4. In a plaint dated 26/10/2015 and amended on 23/10/2017, the plaintiff claimed that she was issued a grant over the disputed land, which measures 0.0890 hectares, for a term of 99 years

commencing from 1st October 1995. She provided a chronological account of the origin of her title to the disputed land as follows: an allotment letter was issued to her on 6/10/1995 upon payment of the requisite fees. She paid the necessary fees of Kshs. 13,830/- on 17/09/2004. Subsequently, the 4th defendant applied to amend the Registry Index Map ("**RIM**"), which the 3rd defendant approved, and she paid the relevant fee of Kshs. 1,500/- on 22/11/2004. Thereafter, on 23/11/2004, the 4th defendant confirmed that the amendment was successful and affirmed that the disputed land was now issued with the new no. **Mavoko/Municipality Block 7/117**.

5. On 28/04/2006, she remitted the appropriate fees for the issuance of a lease certificate, which was subsequently issued on 3/06/2005. She has maintained peaceful occupation of the disputed land since 1995 and initiated construction on it in 2012. However, on 7/04/2015, she received a demand notice from the 1st defendant asserting ownership. She contended that the allegation made by the 1st defendant was marred by forgery, as the indent number (grant folio) she possessed had been unlawfully altered. Moreover, **337/1008** was now nonexistent, as the title documents had been replaced with block numbers.

6. She characterised the 1st defendant's title documents as illegally obtained and stated that her title took precedence as she acquired it in 2005, whereas the 1st defendant's title was

acquired in 2010. In consequence, she sought the following reliefs from this court: -

a) An order of permanent injunction against the 1st defendant, by herself, her agents and/or servants, from claiming ownership, trespassing, selling, mortgaging, sub-letting, illegally altering title, or interfering with the plaintiff's ownership, peaceful possession, occupation and enjoyment of all that parcel of land, better known as MAVOKO MUNICIPALITY BLOCK 7/117, registered under the provisions of the Registered Land Act (Cap 300 Laws of Kenya) [Now Repealed], vide grant IR No., issued on the 6th October 1995 for a term of 99 years from the 1st October 1995, and whose dimensions are delineated in the deed plan number 197445 annexed to the grant.

b) A declaration that the plaintiff is the bona fide and registered proprietor/ owner of the parcel of land better known as MAVOKO MUNICIPALITY BLOCK 7/117, registered under the provisions of the Registered Land Act (Cap 300 Laws of Kenya) [Now Repealed] vide grant IR No. issued on the 6th October 1995 for a term of 99 years from the 1st October 1995 and whose dimensions are delineated in the deed plan number 197445 annexed to the grant.

c) Costs of this suit with interest at court rates.

d) Any other remedy that deems fit by the honourable court deems fit to grant.

7. Upon service, the 1st defendant filed a defence and counterclaim dated 7/12/2015 that was amended on 21/03/2023. She denied the claims and required the plaintiff to prove them. Further, she averred she was a stranger to most of the averments. She informed the court that she was the legitimate owner of the disputed land, and that if the plaintiff held title at all, it must have been acquired by fraudulent means, and that any amendment to the RIM was made in furtherance of the fraud.
8. Taking a cue from the plaintiff, she gave a chronological account of her acquisition of the disputed land. On 11/06/1991, she purchased an unsurveyed plot no. 90 in Mavoko Town Council (now Mavoko Sub County) from the allottee Benjamin Kitaka Mutuku ("Benjamin") for a consideration of Kshs. 40,000. A transfer between the parties was executed on 11/06/1995, following approval by the then Commissioner of Lands. Subsequently, on 10/11/1995, the unsurveyed allotted land was surveyed, and the survey plan no. 197445 was issued by the 4th defendant. On the same date, the Commissioner of Lands issued her a title document, effective from 1/10/1990, for a term of 99 years.

9. Furthermore, it was only in April 2015 that she discovered that the plaintiff had entered the disputed land on the strength of a fraudulent title document, and she consequently pleaded and particularised fraud against all the other defendants together with the plaintiff. To her, the acts of a subsequent allocation, the amendment of the RIM, and even the approval of building plans amounted to fraud. Ultimately, she sought the following several orders from this court: -

a) Declaration that the 1st defendant legally owns the subject land, and a permanent restraining order against the plaintiff, barring her, her agents, associates, or any other person from trespassing, building, excavating, or dealing in any manner with the land known as L.R. No. 337/1008, and indeed causing nuisance and annoyance to the 1st defendant.

b) Declaration that the subject land L.R. No. 337/1008 was obtained fraudulently and that the lease title for Mavoko Municipality Block 7/117 was obtained fraudulently.

c) An order that the 2nd defendant, through the Land Registrar Machakos, does cancel the title lease for Mavoko Municipality Block 7/117 and effect the cancellation on the register.

d) General damages against the plaintiff for trespass and illegally acquiring the 1st

defendant's land and denying her a right to occupancy.

- e) An order that the plaintiff does immediately demolish all the development, including the perimeter wall erected on L.R. No. 337/1008 or Mavoko Municipality Block 6/117.***
- f) An order that the plaintiff fill the excavations on L.R. No. 337/1008 or Mavoko Municipality Block 6/117 and level the ground to the original form.***
- g) An order that the plaintiff does carry away the debris from the demolished construction material and bear the costs thereof.***
- h) An order that the plaintiff does vacate L.R. No. 337/1008 or Mavoko Municipality Block 6/117.***
- i) Damages against the 2nd to 7th defendants for facilitating the illegal registration of the disputed land in the plaintiff's name.***
- j) Costs of the suit.***
- k) Any other or further relief that this honourable court may deem fit and just to grant.***

Issues for determination

10. Having considered the pleadings and the evidence presented by the parties during the hearing on the merits and issues as outlined in the filed submissions and the 1st defendant's list of issues dated 26/01/2019, it is the considered view of this court that the issues that arise for determination are; **which of the**

two conflicting title documents should be upheld and whether the plaintiff has trespassed onto the disputed land. Having outlined the issues to be decided, this court will now summarise the parties' evidence on the identified issues.

Hearing and evidence

11. The matter eventually proceeded to a hearing on 4/03/2021, during which the plaintiff **(PW1)**, Peter Maingi Mumo **(PW2)**, Nancy Mireri **(PW3)**, Llyod Karani **(PW4)**, the 1st defendant **(DW1)**, Rose Ndungwa Nzioka **(DW2)**, Elias Muthoni Kaburu **(DW3)**, and Mark Muigai Wanderi **(DW4)** gave evidence. Their evidence included witness statements (except for PW3, PW4, and DW4, who are government officers summoned by the court), oral testimonies, and various documents. The testimonies of PW1 and DW1 reiterated their pleadings, so it is unnecessary to repeat them.
12. Primarily, the plaintiff produced several documents elucidating the origin of her title document, and they were: a certificate of lease issued for Block 7/117 issued to her on 3/06/2005. An allotment letter of 6/10/1995 for an unsurveyed residential plot in Athi River. However, she made payments for the requisite amount of Kshs. 13,830/- on 17/09/2004, as evident from the receipt. She also produced a deed plan of the disputed land, which reflects that the deed plan no. 197445 was issued on 24/07/1995. She also tendered a Part Development Plan ("PDP") no. 04 for Athi River.

13. She also tendered a letter from the Commissioner of Lands, of 10/08/2004, directed at the Director of Surveys, permitting it to amend the Registry Index Map ("RIM") concerning certain parcels of land, including the disputed land. It mentioned that these parcels were in F/R 221/97 and indicated that the purpose of the amendment was to facilitate the issuance of a grant. PW2 paid for the amendment on 22/11/2004. Shortly thereafter, the Director of Surveys wrote to the Commissioner of Lands on 23/11/2004, responding to the letter, stating that the amendments had been made and that the amended RIM had been forwarded.
14. Of particular interest is that the disputed land was now described as Mavoko Block 7/117, formerly L.R. No. 337/1008. Subsequently, on 20/04/2005, the Commissioner of Lands communicated with the 5th and 7th defendants by forwarding the lease, which was duly stamped and signed for registration and distribution. The plaintiff also testified that she commenced construction on the disputed land in 2012 and entered it in 2015. She also produced the RIM.
15. During cross-examination, she stated that she was unaware of the reasons behind the amendment of the map and indicated that her father financed the acquisition of the disputed land. She reported her birth year as 1977; however, her national identity card listed her date of birth as

30/07/1982. She stated she could not recall whether she accepted the offer in writing.

16. Furthermore, she stated the deed plan for L.R. No. 337/1008 was dated 24/7/1995, which predates the issuance of her letter of allotment. She was uncertain as to why the land was transferred from the repealed **Registration of Titles Act (“RTA”)** to the repealed **Registered Land Act (“RLA”)**, and stated that she never requested such a conversion. The sole title she possesses is from the Machakos Land Registry; she does not hold a title from the Nairobi Central Registry. She exhibited inconsistencies in her testimony regarding her age as of 1995, fluctuating between 13 and 18.
17. **PW2**, the plaintiff’s father, reiterated her evidence in chief during his testimony and stated that he was the one who acquired the disputed land in 1995, having applied for a residuary interest in the land, as the plaintiff was a minor. According to the RIM, the disputed land was located in “Block”, which had essentially replaced the L.R. Nos, and therefore, he argued that the 1st defendant’s land was non-existent. The plaintiff had occupied the disputed land since 1995.
18. On cross-examination, he testified that although an acceptance letter for the allotment was written, he did not have it with him. He could not provide evidence of land rate payments for the period from 1995 to 2014. The payment receipts for the allotment did not specify the plot number. The

plaintiff was not issued a title for L.R. No. 337/1008 because the amendment had not been conducted. At the time of allotment, a deed plan existed. The Commissioner of Lands initiated the conversion process. The letter dated 10/08/2004 from the Commissioner of Lands to the 4th defendant stated that an amendment was required, but did not specify that it should be from LR 337/1008 to Block 117. As per this letter, the plaintiff was to be issued with a grant, not a certificate of lease.

19. **PW3**, a County Land Registrar in Machakos, in her exam in chief, affirmed that upon the occurrence of a conversion, the relevant Cabinet Secretary issues a lease, which is subsequently forwarded for registration. As evidenced by the plaintiff's documents, a letter dated 20/04/2005 was dispatched to her docket. Subsequently, her office issued the lease certificate to the plaintiff, and its contents correspond with the register. The register was officially opened on 28/04/2005. Both the lease and the white card align, and an official search confirms consistency with the register.
20. During cross-examination and re-examination, she testified that although her knowledge of the disputed land was limited, she understood that, during a conversion process, the title must be surrendered to the commissioner of lands, who then issues the lease, which is subsequently forwarded to the land registrar.

21. Additionally, a search at the central registry in Nairobi should confirm that the certificate of title was surrendered and that records were transferred to the Machakos land registry. Her office was not permitted to create a register for property that had not been surrendered. She was unable to provide the reason for the conversion; however, she stated that the conversion process is typically initiated by the registered owner and conducted in Nairobi. In this case, if the registered proprietor did not initiate this process, further investigation was warranted. Records demonstrated that numerous leases have been registered for block 7. She presented only the white card, not the parcel file, which would have demonstrated the basis for the register.
22. **PW4**, a land surveyor with the Ministry of Lands at Ardhi House, took the stand and, in exam in chief, he informed the court that the letter on amendments emanated from its office. Upon being presented with the RIM produced by the plaintiff, the witness confirmed that it pertained to Mavoko Municipality Block 7.
23. He experienced difficulty clarifying whether the FR number had been amended, as his statements on the matter were inconsistent. He maintained that the title could not be prepared prior to the amendment of the FR. He further confirmed that the survey map produced by the 1st defendant originated from its office (Director of Surveys). According to his testimony, when an FR is drawn, the initial registration is

typically issued an LR number, which is later converted to a parcel number. All land within a municipality is converted from LR to parcel numbers. The lease held by the 1st defendant previously bore I.R. No. 68339, which was subsequently cancelled and replaced with 68338. The land registrar was responsible for making such amendments. Before any amendment is effected, a surveyor must submit a letter to the Director of Survey requesting cancellation of the previous work.

24. On cross-examination, he testified that from their records, Block 7 comprised several plots and, at present, did not have LR numbers. He stated that, at the time of conversion, each parcel of land had an owner and that amendments did not affect existing rights. He explained that, before any amendment, the surveyor must write a letter, and payment must be made. Regarding conversion, he noted that a gazette notice is required, although he did not possess the relevant gazette notice in this instance.
25. Upon being shown some of the plaintiff's documents, he stated that a deed plan could not be prepared before payment of the stand premiums. He clarified that a deed plan is prepared only after the survey has been registered. Additionally, he observed that, as indicated by the plaintiff's documents, the purpose of amending the RIM was to facilitate the issuance of a grant under the RTA rather than the issuance of a lease under the RLA. Typically, land was registered under

the RLA only after conversion. He stated that at the time of conversion, there was already a grant in the name of 1st defendant, and such conversion should not have interfered with her ownership.

26. **DW1's** produced documents illuminated the history of her acquisition of the disputed land. An allotment letter for an unsurveyed plot no. 90, Athi River was issued on 18/10/1990 by the Commissioner of Lands to Benjamin Kitaka Mutuku ("Benjamin") under plan no. 30711/XVI/107B and required payment of Kshs. 9,330/- and specified particular conditions, including the transfer process and acceptance within 30 days. Benjamin paid this Kshs. 9330/- on 14/08/1991. On 26/08/1991, the Commissioner of Lands corresponded with the 4th defendant, informing it that the allotment had been accepted by Benjamin and instructing it to proceed with the survey. The relevant PDP was presented, and it references FR No. CT 221/97 and File no. 130551.

27. Benjamin and the 1st defendant entered into a sale agreement on 11/06/1991. A certificate of payment of rates and other charges was issued to Benjamin by the then Mavoko Town Council ("council") on 12/06/1991. On the same date, the council wrote to the Commissioner for Lands stating that it had no objection to the transfer. She paid the council application fees on 16/06/1995 for the issuance of a plot in her name. She paid transfer fees to the Lands Office on 7/07/1995 in the amount of Kshs. 2000/-. She also paid Kshs. 1000/- towards

advertisement to the council on 26/06/1996. Further, she paid Kshs. 500/- on 12/05/2000 to the council for it to point out the beacons to her. A transfer form was executed on 23/06/1995 between her and Benjamin, and she paid the transfer fee of Kshs. 2,800/- to the land's office on 7/07/1995.

28. She also presented a certificate of official search indicating that the disputed land was registered in her name on 5/02/1996. It showed the cancellation of grant no. from IR 68339 to 68338, dated 5/02/2010, and the corrections were duly signed and sealed by the Registrar of Titles. The LR no. thereof is 337/1008, which tallies with the LR. No. contained in deed plan no. 197445.

29. During cross-examination, she testified that neither the Commissioner of Lands nor any other party issued any correspondence to her indicating an intent to amend the map. There was no record of any communication requesting that she surrender the title document or requesting a replacement thereof. Her lease certificate delineates a land area of 0.0990 ha. Survey fees amounting to Kshs 1,390/- were paid on 18/7/1995 for plot 337/1008. The Lands Office provided an accurate stamp duty valuation, resulting in an indicated amount of Kshs 70,000/- stated in the transfer form. She was unable to recall when her title document was corrected. Furthermore, she possesses no records indicating that her land had been converted.

30. **DW2** asserted that she had known the plaintiff and **PW2** since 1998. Since she used to live on land adjacent to the disputed land, she was aware of the plaintiff's start of construction in 2014 and occupancy of the disputed land in 2015. She produced a survey plan indicating the location of her property relative to the disputed land, as well as a title document for LR No. 337/1012, grant IR no. 70488, registered in her name. According to her, she was not privy to any conversions. According to her, the defence and the plaintiff's maps were at variance.
31. **DW3**, an Assistant Director of Land and Administration at the Ministry of Lands situated in Ardhi House, confirmed that their records indicated the disputed land belonged to the 1st defendant. His primary testimony mirrored that of the DWI's testimony, and his documents corroborated those submitted by the 1st defendant. Moreover, he presented a letter authored by Benjamin to the Commissioner of Lands, dated 20/06/1991, requesting approval to transfer "Plot no 90 Athi River" to the 1st defendant. This request was approved on 15/11/1993, with the requirement that he settle the rent and rates, obtain a clearance certificate, and pay a consent fee of Kshs 100/-. An assessment valued the land at Kshs 70,000/.
32. Upon receiving this letter, Benjamin paid the consent fee by submitting a cheque to the Commissioner of Lands on 7/11/1995. Furthermore, on 24/07/1995, the 4th defendant wrote to the Commissioner of Lands, forwarding deed plan no.

197445 for LR. No. 337/1008, which depicted the area as per the plan. The file number is recorded as CT 221/55. The documentation indicated that survey fees had been settled. Eventually, a lease was issued to the 1st defendant.

33. On cross-examination, he testified that the lease is usually registered before the title is issued. For land allocated and surveyed as IR, a grant is prepared by the commissioner of lands and registered by the chief land registrar. The number on this certificate of title is 68338, but it was previously 68339. This cancellation and rectification could only be explained by the chief land registrar, not by his office.
34. Further, another file from this office existed for an unsurveyed residential plot in Athi River. In it, a lease was prepared in the plaintiff's name for Block 7/117. Accordingly, both the plaintiff and the defendant held leases over the disputed land, and only the Director of Surveys could clarify the land's location.
35. Moreover, the other file it held showed the plaintiff remitted Kshs. 13,830/- via receipt no. F835609 dated 17/09/2004. In it, a letter forwarding the RIM for amendment was made on 23/11/2004. The letter was issued by the Director of Survey to the Commissioner for Lands. Records demonstrated that the RIM was amended. He confirmed that the letter produced by the plaintiff, dated 10/08/2004, formed part of their records. Additionally, the file included a receipt for Kshs. 78,943/-.

36. It also contained an allotment letter dated 6/10/1995, showing an allotment to the plaintiff, with a file reference number of 249276. Furthermore, he stated that the certificate of title for **Mavoko Municipality, L.R. No. 337/1008**, had never been cancelled, and that the correspondence produced by the plaintiff between the plaintiff and the Commissioner of Lands pertained to amendments to the RIM. The certificate of lease for **Mavoko Municipality Block 7/117**, produced by the plaintiff, was not part of the records.
37. Upon re-examination, he testified that the file they held over the plaintiff's parcel never contained a letter of acceptance of the allotment. The letter produced by the plaintiff, dated 10/08/2004, refers to an amendment to issue a grant; however, it does not specify to whom the grant and/or new numbers were to be issued. The prerogative to convert from RTA to RLA belonged to the 4th defendant, and that the parcels of land in dispute should not have similar nos. and that Benjamin's documents were first in time.
38. **DW4**, the Principal Land Registrar at the State Department of Lands and Physical Planning, testified that an official search for LR No. 337/1008 indicated that the 1st defendant was the current registered owner of the disputed land. The Commissioner of Lands issued the certificate of title in favour of the 1st defendant's name on 10/11/1996, and the Registrar of Titles officially registered it on 5/02/1996. Usually, the Chief

Land Registrar issues the IR numbers. In this case, the 1st defendant's certificate of title was IR no. 68338, which was rectified from IR no.68339 to correct an error and was countersigned correctly.

39. He stated that the procedure for conversion is as follows: The registered proprietor must request a conversion. The request goes to the surveyor and then to the Chief Land Registrar. The Chief Land Registrar then contacts the survey office to confirm if the parcel has been converted. If it has not, the Director of Survey will then publish a gazette notice. If it has, the Director of the Survey will provide the sealed R.I.M. with the new number. After this, the registered proprietor must surrender the original title to the Chief Land Registrar. Once surrendered, an endorsement is made on the title to confirm the conversion. The deed file and sealed RIM are then sent to the district land registrar. After that, the district land registrar registers them, and if they are leases, he opens the white cards. Lastly, a title is finally issued to the owner.
40. He further asserted that the deed file in its possession contained only a copy of the grant registered under the RTA, which pertained to the 1st defendant. There were no records indicating that the 1st defendant requested conversion or surrendered her title for conversion. Additionally, ownership did not usually change during the conversion process. In this case, there were no records relating to the plaintiff's interest in the disputed land, either as a lease or otherwise. Furthermore,

there was no evidence that the Chief Land Registrar requested the District Land Registrar, Machakos, to issue a title.

Submissions

41. After the hearing concluded, and at the request of the parties, the parties argued their respective cases through written submissions. The court sincerely appreciates the well-argued submissions received from the law firms of **Ms Aunga Omwenga & Co. Advocates**, representing the plaintiff, dated 16/09/2025, and from **Ms Lucy Njiru & Co. Advocates**, representing the 1st defendants, dated 11/06/2025. Therefore, in its analysis and determination, the judgment will carefully consider the arguments presented in the rival submissions.

Analysis and determination

42. The issues previously identified will be addressed collectively. On the first issue, our courts are rich in jurisprudence on the issue of double allocation, and this court resonates with them: -

In **Dina Management Ltd v County Government of Mombasa & 5 others [2023] KESC 30 (KLR)**, the Supreme Court affirmed the well-cited decision of **Munyu Maina v Hiram Gathiha Maina [2013] KECA 94 (KLR)**, and held: -

“Where the registered proprietor’s root title was under challenge, it was not enough to dangle the

instrument of title as proof of ownership. It was the instrument that was in challenge, and therefore, the registered proprietor must go beyond the instrument and prove the legality of the title and show that the acquisition was legal, formal, and free from any encumbrance, including interests which would not be noted in the register...Under the repealed Government Lands Act (GLA), a PDP had to be drawn and approved by the Commissioner of Lands or the Minister for Lands before any unalienated Government land could be allocated. After a PDP had been drawn, a letter of allotment based on the approved PDP was then issued to the allottees. It was only after the issuance of the letter of allotment and the compliance with the terms therein that a cadastral survey could be conducted for the issuance of a certificate of lease.”

In a more recent Court of Appeal decision of **Gathonu (As Administrator of the Estate of the Late Thumbi Kariuki) & 3 others v Registrar & 7 others [2024] KECA 668 (KLR)**, the court stated thus;

“Kenyan courts can no longer content to perch on the branch of simply accepting titles as conclusive, incontestible and indefeasible; or the

concomittant argument that in the face of two or more competing titles, the first in time automatically prevails. It is not enough to wave an instrument of title or rest easy on the former rock of chronological primacy. What must now be established by he who would prevail is the solidity of the root of title. No flowery foliage, absent a sturdy and settled root speaking to a regular and legal process preceding the product that is the title, will avail the holder.”

Moreover, a similar position was taken in the well-cited persuasive decision of **Hubert L. Martin & 2 Others v Margaret J. Kamar & 5 Others [2016] KEELC 1092 (KLR)**, thus: -

“A court when faced with a case of two or more titles over the same land has to make an investigation so that it can be discovered which of the two titles should be upheld. This investigation must start at the root of the title and follow all processes and procedures that brought forth the two titles at hand. It follows that the title that is to be upheld is that which conformed to procedure and can properly trace its root without a break in the chain. The parties to such litigation must always bear in mind that their title is under scrutiny and they need to demonstrate how they got their title starting

with its root. No party should take it for granted that simply because they have a title deed or Certificate of Lease, then they have a right over the property. The other party also has a similar document and there is therefore no advantage in hinging one's case solely on the title document that they hold. Every party must show that their title has a good foundation and passed properly to the current title holder."

43. This hearing extended over nearly four years. It was marked by lengthy sessions and the summoning of numerous government officials from various land-related offices. These officials not only produced documents but also provided clarification regarding those documents. From their evidentiary assertions, it became evident that, in certain instances, these officials operated in a disjointed manner, with some unaware of what others were doing; at other times, there was a harmonious understanding among them. In one instance, one officer (PW3) asserted that she could not trace her parcel file. The court commends these officers for their elucidation regarding the documents held by the plaintiff and the 1st defendant.

44. It is a well-established legal principle that he who alleges must prove. Consequently, this court will now scrutinise the evidence to establish the chain of acquisition of the disputed land by the plaintiff and the 1st defendant, thereby

determining which party established and proved the origin of her title to the required standard. In doing so, the court will be guided by the aforementioned case law. We will now start with that of the plaintiff.

45. Based on the chronological evidence, the allotment letter was issued on 6/10/1995 to a minor aged 13, who clearly lacked the legal capacity to accept it. From the sequence of events, there was no activity until 17/09/2004, approximately nine years later, when the plaintiff, now an adult aged 22, made the requisite payments of 13,830/-. It is evident that these payments were made well outside the stipulated acceptance period of 30 days from 6/10/1995. Moreover, the offer included a conditional precedent requiring acceptance within 30 days; however, there is no evidence that the plaintiff accepted it.

46. There was also no record that the Commissioner for Lands had instructed the Director of Surveys to carry out the survey **(see the procedure highlighted in Dina Management Ltd [Supra] and testimony of DW4)**. Nonetheless, she provided the deed plan no. 197445, dated 24/07/1995, for 337/1008. However, this raises more questions than it answers, as the court takes judicial notice that deed plans are typically issued in connection with grants and are prepared and issued after an allotment letter is accepted. In the plaintiff's case, she did not explicate how the deed plan predates the allotment, and there is no evidence that a corresponding grant or certificate of title

under the RTA was ever issued to her, which would render this deed plan relevant. Consequently, the deed plan holds no legal significance in the absence of a corresponding grant. Furthermore, there is no supporting indent. Pointedly, this allotment letter states as follows:

“The issue of the government grant or lease will be undertaken as soon as circumstances permit.”

47. The letter dated 10/08/2004 by the Commissioner of Lands shows the plaintiff was to be issued a grant, which formed the basis for the amendment of the RIM, yet she did not explain why she was issued a certificate of lease for Block 7/117 and not a grant. It was her pleading that **Mavoko/Municipality Block 7/117** was originally **Mavoko Municipality L.R. No. 337/1008**, but the only evidence she produced to substantiate this assertion was a letter from the Director of Survey dated 23/11/2004, which references thus: -

*RE: RIM AMENDMENT- MAVOKO BLOCK 7/88, 109, 117
FORMERLY LR 337/1037 AND 337/1016, 1008
RESPECTIVELY*

48. This correspondence, for the first time, establishes a link between Block 7/117 and 337/1008; however, it cannot serve as a basis for the conversion of land under different land regimes, as its contents affirm that it was merely forwarding the amended RIM over these parcels of land. DW4 testified

that this letter was issued by his office (Director of Surveys). He stated that when land is registered for the first time, the parcels are assigned an L.R. No. Further, he elaborated that an LR No. would cease to exist in two instances: when the RIM is amended or when there is a conversion. However, neither he nor the plaintiff ever produced evidence demonstrating that the plaintiff was ever the registered owner of 337/1008, which had an L.R. No. that would now cease to exist upon amendment.

49. As for conversion, the evidence of all the government officers who testified was consistent, indicating that the process was elaborate. Still, there was no evidence that the plaintiff had ever followed such a process. DW3, who shed light on the two registrations, testified that its records showed that it prepared a lease over Block 7/117 in the plaintiff's name, which was for an unsurveyed residential plot in Athi River. Again, this evidence never placed any nexus between **Block 7/117** and **337/1008**. Evidence shows that these leases were remitted to the District Land Registrar for registration.

50. We will now turn to the 1st defendant's documents, an allotment letter for an unsurveyed plot no. 90, Athi River, was issued on 18/10/1990 by the Commissioner of Lands to Benjamin. He made the requisite payments of Kshs. 9330/- on 14/08/1991, which was several months after the lapse of the stipulated time. Benjamin accepted, as evidenced by a letter from the Commissioner of Lands dated 26/08/1991 to the

Director of Surveys, which confirmed this. The survey was subsequently conducted.

51. The contract and transfer from Benjamin to the 1st defendant adhered to all legal procedures and received approval from the Commissioner of Lands. Thereafter, a survey was conducted, and the Director of Survey issued a deed plan that was forwarded to the Commissioner of Lands. The Commissioner issued instructions on 25/07/1995 for the issuance of a government grant, and such a grant was prepared, as evidenced by the title held by the 1st defendant. However, the I.R. No. shows it was altered from I.R. No. 68339 to I.R. No. 68338.

52. Upon comparison of the histories of the two parcels of land, it is evident to this court that the plaintiff lacked legal capacity to enter into a contract as she was then a minor. Even assuming that she was capable of accepting the offer, there was no evidence showing that the plaintiff had ever accepted the offer. Furthermore, there is no record of an initial survey, as stated by PW4, being conducted that would demonstrate that 337/1008 was conferred upon her, which would then necessitate an amendment. According to the record, she was to be issued a grant; however, there is no record indicating that a grant for 337/1008 was ever issued to her. There was no explanation of how her certificate of lease came to be.

53. Furthermore, no foundation was established regarding how the Director of Survey would refer to 337/1008 as Block 7/117. The burden of proof was on the plaintiff to substantiate the connection, which she failed to do adequately. Her father (PW2) attempted to explain that the Commissioner of Lands conducted a conversion; however, the records do not demonstrate that such a conversion from 337/1008 to Block 7/117 was ever presented. In any event, the evidence showed that conversion could only be initiated by the registered owner. The evidence presented by various government officers was compelling and generally consistent concerning the land acquisition process, and these pieces of evidence revealed significant inconsistencies in the plaintiff's certificate of lease. To this court, in the absence of adherence to the legal process, the certificate of lease for Block 7/117, held by the plaintiff, is invalid. This court so finds.

54. Regarding the 1st defendant's grant over 337/1008, her testimony was consistent and corroborated by DW3. It demonstrated that she and Benjamin complied with all the prerequisite procedures for acquisition. The LR. No. described in the deed plan attached to the grant corresponded with the LR. No. on the grant. There was no record of cancellation or conversion of the grant, and the uncontradicted evidence established that the 1st defendant was the registered owner of 337/1008.

55. The only disruption in the sequence was that the offer was accepted outside the stipulated time by several months. However, there was no record that during this interval, the offer was rescinded and replaced with another offer made to a different third party. Furthermore, the Commissioner for Lands approved the delayed acceptance, thereby facilitating the fulfilment of subsequent legal procedures.

56. There was also the issue of alteration of the I.R. No from 68339 to 68338. The plaintiff made heavy weather of this, which, in this court's humble opinion, was explained by the government officers, who stated that such alterations were made to rectify errors. This line of evidence on correction of errors was in tandem with the provisions of **Section 59 (2)** of the repealed **RTA**, which permitted the relevant officer to rectify grants, certificates of title and other instruments which were to be effected by the addition of further endorsements by correcting former endorsements which were found to be insufficient or to have been otherwise made in error.

57. In the 1st defendant's case, the correction was endorsed correctly, as evidenced by the dating, execution, and stamping by the Registrar of Titles. This rectification did not revoke the grant issued on 10/11/1995. The two instances of interruption in the chain of the 1st defendant's acquisition of the grant have been elucidated satisfactorily to the court. In the instant case, they do not constitute grounds for the cancellation of the 1st defendant's title document. Ultimately, this court

concludes and finds that the 1st defendant's title document should be maintained.

58. In balancing the competing claims, this court finds that the 1st defendant possesses a valid title, whereas the plaintiff does not. It appears that the plaintiff's lease certificate was acquired through her father's misrepresentation, illegality, corruption, fraud, or there was an error by the Land Registry, or a combination of both factors. Pursuant to **Section 26** of the **Land Registration Act**, such a title document is a candidate for impeachment.

59. On the 2nd issue of trespass, both the plaintiff and 1st defendant held title documents, and the plaintiff could not be said to be a trespasser until such time that the court cancels her title document. This court so finds.

60. In conclusion, guided by law and judicial precedents, and based on the foregoing findings and reasons, this court determines that the 1st defendant has succeeded in her claim, whereas the plaintiff has not. As is well established in law, costs follow the outcome of the case, and therefore, costs are awarded to the 1st defendant. The 2nd and 7th defendants failed to file a defence; furthermore, since some of their officers were responsible for the double allocation, costs will not be awarded to them. The final disposal orders are hereby issued as follows:

a) A declaration is hereby made that the 1st defendant legally owns land parcel no. L.R. No. 337/1008 (I.R. No. 68338).

b) A permanent injunction is hereby issued against the plaintiff, barring her, her agents, associates, or any other person claiming under her from trespassing, charging, selling, letting, transacting over, interfering with, building on, excavating, or dealing in any manner with the land known as L.R. No. 337/1008 (I.R. No. 68338).

c) A declaration is hereby made that the plaintiff acquired the certificate of lease over Mavoko Municipality Block 7/117 fraudulently.

d) The 2nd defendant is hereby directed to cancel the certificate of lease over Mavoko Municipality Block 7/117 and effect the cancellation on the register.

e) An order is hereby made directing the plaintiff to vacate L.R. No. 337/1008 (I.R. No. 68338) and, at her own cost, remove any developments therein within 6 months of this order and give the 1st defendant vacant possession. In default,

the 1st defendant shall forcibly evict her, together with her servants or agents, and recover such expenses as a civil debt.

f) Costs of the suit and counterclaim are awarded to the 1st defendant, to be borne by the plaintiff.

Judgment accordingly.

Delivered and Dated at Machakos this 20th day of January, 2026.

**HON. A. Y. KOROSS
JUDGE
20.01.2026**

**Judgment delivered virtually through Microsoft Teams
Video Conferencing Platform**

In the presence of;

Ms Kanja Court Assistant.

Mr. Aunga for Plaintiff.

Mrs. Njiru for 1st Defendant.

No appearance for other parties.

ORIGINAL