



Ayora v Njiru & another (Environment and Land Case Civil Suit E365 of 2022) [2025] KEELC 5721 (KLR) (29 July 2025) (Judgment)

Neutral citation: [2025] KEELC 5721 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE CIVIL SUIT E365 OF 2022**

**AA OMOLLO, J
JULY 29, 2025**

BETWEEN

JACOB OMWANGE AYORA PLAINTIFF

AND

PETER BONIFACE NJIRU 1ST DEFENDANT

ANTHONY MWANGI MBUTHIA & MICHAEL KIMUNYA KABOGO (SUED AS THE OFFICIALS OF JADA B SELF HELP GROUP (KOMAROCK SAIKA CENTRE-NAIROBI)) 2ND DEFENDANT

JUDGMENT

1. The Plaintiff filed this suit against the 1st and 2nd Defendants vide Plaintiff dated 24th October 2022 seeking for the following orders;
 - a. A declaration that the plaintiff is the lawful owner of the Plot No. C23 being portion of LR. No. 11344/ R Nairobi.
 - b. Permanent injunction restraining the 1st defendant from trespassing, selling, constructing and or doing any other act to the plaintiff property known as Plot No. C23 being portion of LR. No. 11344/ R Nairobi.
 - c. General damages for trespass and loss of user.
 - d. The costs of the suit and any other relief the Court may see claim to so grant.
2. The Plaintiff stated that on or about 11th May 1999, he entered into a sale agreement with the 2nd defendant to purchase Plot No. C23, a subdivision of LR No. 11344/R in Nairobi for an agreed price which was paid in full. The Plaintiff averred that he was issued ownership certificates on 2nd June 1999, witnessed by officials of the 2nd defendant.



3. That on 13th September 2003, the Nairobi City Council formally allocated the suit property to him through a letter of allotment and he paid all required fees, obtained receipts and approvals, including a subdivision plan on 17th February 2021 from the City Council. The Plaintiff stated that he occupied and used Plot C23 the suit property without dispute until September 2021, when the 1st defendant began fencing and constructing on it and having fallen ill and suffered a stroke, he was unable to intervene at the time.
4. The Plaintiff stated that the 1st defendant has fenced off and begun building on the Plot without his consent or legal authority. He added that the 2nd defendant failed to provide the alleged title documents claiming ownership in collusion with the 1st defendant.
5. He particularized negligence and unlawful conduct by the 1st and 2nd defendants as trespassing, unauthorized construction, withholding documents, and damaging Plot C23.
6. The 2nd Defendant filed a statement of defence and counter claim dated 7th March 2023 seeking for the following orders;
 - a. A declaration that the plaintiff by counter-claim is the registered owner of all that piece of plots known as C45 on LR 11344/R situated in Komarock area along Kangundo Road -Nairobi County.
 - b. A declaration that the transfer and/or occupation, repossession by the defendant on the counter-claim of that plot number C 45 on LR 11344/ R is illegal and fraudulent.
 - c. The occupation, repossession and development be declared null and void and eviction do issue forthwith to plot No. C45.
 - d. A declaration that the default and/or changing the face on the ground to create plots C20 and C21 was illegal and the same be returned to the original mapping thereof.
 - e. A permanent injunction restraining the defendant by way of counter-claim by themselves, their agents, representatives from evicting, entering, trespassing or in any way interfering with the plaintiff's quiet procession of the piece C45 forthwith.
 - f. The plaintiff in way of counter-claim be granted general and aggravated damages for trespassing and mesne profits.
 - g. The cost of the counter-claim be awarded by the defendant and any other relief the Court may see deem to grant.
7. The 2nd Defendant affirms that the Plaintiff entered into a sale agreement with it as stated and was issued with ownership certificate and in 2003 the Nairobi City Council Town Clerk's department issued a letter of allotment. That he paid all the required costs by the relevant authorities.
8. Further, the 2nd Defendant confirmed that the Plaintiff did honour terms and conditions of sale agreement dated 11th May 1999 and was at liberty to follow up registration of the document.
9. He also confirmed that the Plaintiff reported to them that the 1st Defendant trespassed into Plot C23 but denies that they failed to provide him with ownership documents.
10. In the counter claim the Plaintiff (by counter-claim) asserts ownership of Plot No. C45, a subdivision of LR No. 11344/R Nairobi, which was allocated to it for use as an office.
11. That by sale agreement dated 24/1/2003, the Defendant (by counter-claim) was to be allocated Plot No. C20 upon payment of Kshs. 100,000 which he failed to honor.



12. The Plaintiff claims that the Defendant unlawfully trespassed and began developing both plots C45 and C20 without payment or consent.
13. That any registration or occupation by the Defendant was obtained through fraudulent means and particularized the fraud as illegally repossessing and developing the two plots, altering mapping and plot numbers to C20 and C21, fraudulently claiming ownership using forged documents, forging ownership documents, falsely claiming purchase and title and illegally transferring property to self-using parallel, fraudulent documentation and maps.
14. The Plaintiff (in the counter claim) stated that it has been denied use of its property, Plot C45 and C20 and has suffered loss and damage.
15. The 1st Defendant filed a statement of Defence dated 26/10/2025 to the 2nd Defendant's counter claim and statement of defence dated 17/4/2023 to the Plaintiff denying the averments thereof. The 1st Defendant stated that the counterclaim is fatally defective and should be struck out for violating Section 19 of the Civil Procedure Act and Order 7 Rule 8 of the Civil Procedure Rules, 2010.
16. He stated that he lawfully acquired Plots C20 and C21 allotment letters issued in 2003 by the Nairobi City Council, following lawful subdivision of LR No. 11344/R and that he has no interest in Plot C-23. That he has been in peaceful and continuous possession and has developed the land by running a bar and restaurant since 2001, paying all relevant fees and obtaining business permits.
17. The 1st Defendant contend that the Plaintiff's claims are contradictory, misleading and an attempt to unlawfully grab his land, and that he has never dealt with or bought any land from the Plaintiff and is a stranger to the alleged ownership of Plot C-45.
18. He stated that the counter claim is time-barred under Section 7 of the Limitations of Actions Act having been brought over 20 years after possession began. The 1st Defendant stated that since August 2022, Anthony Mwangi Mbuthia and Michael Kimunya Kabogo sued as the 2nd Defendant, have harassed him by sending intruders to vandalize and steal from his property, forcing him to hire security.
19. He also denied all allegations of fraud, trespass, or improper conduct and claims that the Plaintiffs have never occupied or made any claim to the plots until recently.
20. The Plaintiff in the main suit filed a reply to the 1st Defendant's statement of defence dated 4/6/2023 where he reiterated the facts pleaded in his Plaintiff and put the 1st Defendant to strict proof thereof while.

Evidence

21. The Plaintiff, Jacob Omwange Ayora testified and adopted his written statement dated 25/10/2022 as his evidence in chief. He produced the documents filed at page 9 of his bundle dated 24/10/2022 as PExh1-8 and the survey map MFI-9.
22. The documents produced included; a Sale agreement dated 11/5/1999, Registration Certificate of Jada B. Self-help group dated 24/7/1998, Allocation letter ino plaintiff for Plot C-23 dated 13/9/2003, Receipt No.730839 to Nairobi City County dated 20.7.2006, PW1's membership certificate dated 2/6/1999, share certificate dated 5/5/2013 and CBO certificate dated 2/9/2012 and 24/5/2018. The Plaintiff also produced photographs of building materials deposited.
23. He stated that on 11/5/1998 the Plaintiff and the 2nd Defendant who was then known as Jada Special commercial Shopping Center entered into a sale agreement for the purchase of Plot -C23 at Ksh.100,000 which he fully paid. Subsequently, the 2nd Defendant sought registration certificate of the Self-Help Group which was obtained on 24/7/1998.



24. The witness testified that Nairobi City Council provided him with allocation letter dated 13/9/2003 for Plot C23-Komarock -Saika Shopping center. He continued to state that upon entering the sale agreement with the 2nd Defendant, they issued him with an ownership certificate dated 2/6/1999, signed and witnessed at their offices.
25. That on 5/5/2013, he was issued with a new certificate No.064 by Komarock Saika Market/Shopping Center and has been in occupation of the plot and for some time he allowed the owner of Plot C-20 who is the 1st Defendant to use it as parking.
26. He stated that he used to have access to Plot C23 but Mr. Njiru, the 1st Defendant has illegally occupied it denying him entry. That the 1st Defendant owns plot C-20 which neighbours his plot and put up a bar but had no parking space and based on their friendship allowed him to use his plot C23 as parking but did not allow him develop the plot or fence it.
27. It is his further evidence that in the year 2020, the Nairobi County Government issued lease titles & all plots that were not titled were issued new allotment letters with new parcel numbers.
28. During cross examination, the Plaintiff stated that he claims Plot C-23 which he purchased in 1999 from the Committee for Kshs.100,000 and later on received allocation letter from the Nairobi City Council but has never received a beacon certificate.
29. The 1st Defendant, Peter Boniface Ndwiga Njiru testified by adopting his witness statement dated 12/4/2023 and produced bundle containing 13 documents DExh1-3, 5-9 and 11-13. He asserted that the Plaintiff has never served him with summons, contrary to Order 5, Rule 1 of the Civil Procedure Rules, 2010, thereby rendering the suit abated by law.
30. He states that he did not buy the two plots numbered C-20 and C-21 but that he applied for the plots from the Nairobi City Council and was allotted with allotment letter for C-20 and C-21. He contends that this suit is a scheme to fraudulently dispossess him of lawfully acquired property (plots C20 and C21 at Komarock, Saika Shopping Centre), which he has peacefully owned, developed, and occupied for over 20 years.
31. During cross examination, he stated that he did not know that there existed plot 23 or that C-20 includes C-23. DW1 stated that he made an application to be issued with a title but did not receive any response. He further stated that he has never entered into any sale agreement with the 2nd Defendant. When shown a written sale agreement dated 24/1/2003 between himself and 2nd Defendant at page 15-17 of 2nd Defendant's bundle he contended the document was not a sale agreement.
32. The 1st Defendant denied trespassing or interfering with any property, especially Plot C-23 and accused Anthony Mwangi Mbuthia and Michael Kimunya Kabogo of 2nd Defendant of unlawfully interfering with his property, leading him to file legal suits (MCELCC E385/2022 and earlier CMCC 496/2022). That his suit was later withdrawn and refiled correctly in the Environment and Land Court.
33. DW1 produced allotment letters 2003 for his two plots, payment receipts, valuation reports dated dated 17/11/2022, beacon certificates dated 4/8/2008, and business permits as proof of ownership and lawful possession. He further produced a scheme map showing position of his plots, pictures of his developments together with regular payment of ground rent and rates since 2003.
34. The 1st Defendant stated that he ran a bar and restaurant from the two plots since 2002, and later incorporated the business in the name of Better Options Resort Ltd.



35. DW2, was Peter Wanyoike the director of land survey at the City County Government. He was summoned by the 1st Defendant to testify to the documents relating to this matter, beacon certificate for C-20& C-21.
36. He stated that he cannot confirm their authenticity because beacon certificates for the said plots should be kept by their office in Dandora from which office they consulted and were told the Plots do not have beacon certificates. DW2 stated that the certificates for plots C-20 and C-21 were not issued so none exists in their records.
37. DW2 stated that they are having regularization exercise for the scheme and have an approved survey plan prepared in 2002 and titling is on course. He could not confirm who between the parties has been approved for titling.
38. He stated that he has a survey map that is approved and a PDP for the area and currently the suit plots are numbered Block 190/3358 and 3359 as per the map which is the same that the 2nd Defendant's. DW2 admitted that there is a similarity between the map and the impugned beacon certificate and that C-20 & C-21 are the numbers given by the City County in the subdivision plan which was been forwarded to the survey of Kenya for numbering.
39. He confirmed that the area started as a block for traders going by the name of Jada, and the mother title covers a big area covering many estates in Kayole and Dandora. That the official subdivision happened in 2022 when the plan was submitted to the survey of Kenya and approved in 2023. He affirmed that it is C-20 & C-21 which gave rise to Block 190/3358 and 3359.
40. The 2nd Defendant presented their evidence through the testimony of Michael Kimunya Karago who testified as DW3. He said that he is the current secretary of the 2nd Defendant, a registered CBO in 2012 and that Plaintiff is their member who was allocated Plot C-23.
41. He adopted his written statement dated 7/3/2023 and further witness statement dated 10/7/2023 as evidence in chief and produced the documents in their further list dated 23/2/2024. The documents produced included correspondence from the office of the Governor of Nairobi County dated 24/10/23; affidavit by Anthony Mwangi and Dw3 dated 18/3/2018; copy of minutes of the 2nd Defendant dated 12/05/1999.
42. DW3 testified that the 1st Defendant is not a member of 2nd Defendant because he did not abide by the agreement of 23/1/2003 where they had agreed that he pays the group Ksh.100,000 for Plot C-20. He denied that the group did issue the 1st Defendant with any certificate but it runs a club known as Log in on the land covering 4 Plots i.e C-20,21,23 and 45.
43. The witness avers that the 1st Defendant was not given authority to construct on the suit plots. That Plot C-21, C-20 and C45 all belong to the 2nd Defendant and C-23 belonged to the Plaintiff.
44. He also stated that the surveying of the plots has already been done by the City Council and parcel numbers given which will lead to titling with C-23 having been allocated to the Plaintiff. That they were allocated parcel no.11344/R (did not purchase it) and that C-21 which measures 30 by 60 was given by the project.
45. He stated that minute 6 (Dex no.8 on 2nd Defendant's list) confirms that the request was made by councilor Ng'otho and letter at no. 4 in their list also refers to the minute for the construction of a market for Komarock/Saiko traders.
46. During cross examination, DW3 confirmed that the 2nd Defendant is claiming plot C-21 and C-45 although they have not produced the allotment letters in their lists filed. He stated that at Page 26 of



the bundled dated 7/3/2023 is a certificate for plot 45 issued to Jada B Self Group on 16/5/1999. He affirmed that the CBO was registered on 5/9/2012 as Komarock/Saika Market Shopping Centre and Jaida B Self Help Group then changed to Komarock Saika Market.

Submissions

47. The Plaintiff filed his submissions dated 6th February 2025, the 1st Defendant filed submissions dated 30/4/2025 and 2nd Defendant filed submissions dated 21st March 2025.
48. In his submissions, the Plaintiff asserts lawful ownership of Plot C23, supported by documentary evidence, a valid sale agreement, an instrument of transfer, and approval and confirmation by the 2nd Defendant, the land management group. He stated that the 2nd Defendant, through its officials confirmed that the Plaintiff lawfully acquired Plot C23 and has paid all necessary fees, as supported by a communication from the Office of the Governor dated 24/10/2023.
49. The Plaintiff submitted that a surveyor from Nairobi County verified his documents and confirmed that the approval area map aligns with the ground reality, validating his title. The Plaintiff argues that the 1st Defendant's documents are questionable, untraceable, and inconsistent with official records. That the 1st Defendant neither holds a valid title nor presented a sale agreement or legitimate transfer documents. The Plaintiff further argues that the 1st Defendant trespassed onto Plot C23 and fraudulently presented documents relating to Plot C20 and C21 which are unrelated to his disputed plot.
50. The Plaintiff submitted that he qualifies as a bona fide purchaser for value without notice, meeting the legal threshold set out in *Mwangi James Njihia v Janetta Wanjiku Mwangi & Another* (2021) eKLR which reaffirmed the principles of bona fide purchase as including good faith, valuable consideration, and absence of notice of fraud, *Lawrence P. Mukiri v Attorney General & 4 Others [CA No. 146 of 2014]* which adopted the Ugandan case of *Katende v Haridar & Co. Ltd* (2008) EA 173, where the Court held that a bona fide purchaser must hold a certificate of title, purchase in good faith, pay valuable consideration, have no knowledge of fraud and not be party to fraud.
51. He also relied on the Supreme Court decision in *Dina Management Ltd v County Government of Mombasa & 5 Others* [2023] SC Petition No. 8 (E010) of 2021 which emphasized that a bona fide purchaser is one who buys property without notice of any prior claim, either actual or constructive and case of *Samuel Kamere v Land Registrar Kajiado* (2015) eKLR where the Court of Appeal held that to qualify as a bona fide purchaser, a person must acquire a valid title, conduct due diligence and pay valuable consideration.
52. He submitted that he produced all requisite documentation, followed lawful processes and fulfilled the requirements under Section 3(3) of the *Law of Contract Act* (Cap. 23) while on the other hand, the 1st Defendant has no valid claim, title, or consistent documentation.
53. The 1st Defendant submitted that the 2nd Defendant's Counterclaim dated 7/3/2023 is premised on a sale agreement dated 24/1/2003, with an alleged breach occurring by 31/3/2003 thus time-barred and the Court is divested of jurisdiction. He stated that Sections 7 and 11 of the *Limitation of Actions Act* (Cap. 22, Laws of Kenya) bar any claim to recover land after 12 years from the date the cause of action accrued thus, the counterclaim ought to have been brought by March 2015.
54. In support, the 1st Defendant cited the case of *Owner of Motor Vessel "Lilian S" v Caltex Oil (Kenya) Ltd* [1989] eKLR which held that jurisdiction is everything and without it, a court must down its tools and *John Mwangi Mathenge v Daniel Ngugi Rao* [2005] KEHC 480 which held that a claim filed after more than 12 years in a land matter is time-barred and unsustainable.



55. The 1st Defendant also submitted that he holds lawful proprietary interest in plots C20 and C21, acquired through valid allotment and payment and that the 2nd Defendant, having no legal title or capacity, could not purport to sell or transfer land it did not own.
56. He stated that at all material times, the subject land was unalienated Government land under the custodianship of the Nairobi City Council and the only lawful acquisition of interests in the said land was via issuance of allotment letters by the Commissioner/Council and payment of stand premium and ground rent. That he has demonstrated compliance with this through valid allotment letters and receipts, whereas the Plaintiff and 2nd Defendant failed to show similar compliance.
57. In support of his case, the 1st Defendant cited the case of Joseph Arap Ngok v Justice Moiyo Ole Keiwua & 5 Others [1997] Eklr which held that an allotment letter gives rise to proprietary rights once the allottee complies with the terms, Torino Enterprises Ltd v Attorney General [2023] KESC 79 (SCOK) which held that an allotment letter, without compliance, confers no transferable title and only after registration can one transfer valid title and African Line Transport Co Ltd v Attorney General [Mombasa HCCC No. 276 of 2013] which held that compliance with conditions in the allotment letter (payment, beacons) is essential to prove ownership.
58. The 1st Defendant stated that the 2nd Defendant, being a self-help group registered under the Ministry of Culture and Social Services (not under the *Land Act*), lacks legal personality to own or transact land and as such, it could not lawfully sell or allocate land it did not own or have capacity to alienate.
59. That also the expert, Mr. Wanyokie DW2 testimony on beacon certificate should be weighed cautiously and proposed that the Court adopt the reasoning in Sakwa & 2 Others v National Housing Corporation & 4 Others [2022] KEELC 14930 which held that expert evidence must be tested and not accepted at face value and Stephen Kinini Wangondu v The Ark Ltd [2016] eKLR which held that expert evidence does not override primary factual proof, especially in land matters.
60. The 1st Defendant also submitted that he has been in peaceful, open, and continuous possession for over two decades. In proof, he produced photographic evidence of business operation from 2002, business permits, payment receipts to Nairobi City Council and letter of allotment and payment of premium.
61. The 2nd Defendant, (who is the Plaintiff in the Counter claim) submitted that the 1st Defendant has no legal entitlement to plots C23, C20, or C45. They stated that the Plaintiff is a bonafide purchaser of Plot C23 evidenced by Sale Agreement dated 11/5/1999 produced at Pages 9, 11–12 of Plaintiff's bundle, made full payment and was issued with ownership Certificate on 2/6/1999. It is their uncontested admission in paragraphs 3–4 of their statement of defence that he lawfully purchased Plot C23.
62. They submitted that the 1st Defendant never purchased Plot C23 but was allocated Plot C20 conditional upon payment of Kshs. 100,000 to the 2nd Defendant. That the 1st Defendant never honoured as shown in Sale Agreement dated 24th January 2003.
63. They submit that the 1st Defendant has also illegally encroached upon C45 and C23 without any documentary proof or payment receipts. That the Surveyor (DW2) discredited the 1st Defendant's documents, stating they were strange, not traceable, and not issued by legitimate authorities. Further, that Nairobi City County, in a letter dated 24th October 2023 declined to recognize Miradi Certificates or related allotment letters relied upon by the 1st Defendant while the Plaintiff's and 2nd Defendant's documents matched official survey maps.



64. On whether the 1st Defendant trespassed on Plot C-23, they submitted that Section 3(1) of the [Trespass Act](#), Cap 294 prohibits unauthorized entry or occupation of private land. That 1st Defendant having defaulted on the Sale Agreement dated 24th January 2003 of C20 was required to vacate and remove structures by 31st March 2003 as per Clause V. Despite this provision, the 1st Defendant remained on the land and extended his activities to C23 and C45 as shown by photographic evidence and testimony by the 2nd Defendant.
65. In support of their case, the 2nd Defendant (Plaintiff by the counter claim) cited the case of Rhoda S. Kiilu v Jiangxi Water & Hydropower Construction Kenya Ltd [2019] eKLR where court awarded damages and injunction against unlawful occupier. That the non-payment for Plot C20 voided the agreement and mandated removal of any structures thereon and in support cited the case of Kobilo Farm Ltd & Another v Elfam Ltd & Commodities Fund [2022] eKLR where the court rejected buyer's claim where purchase price was unpaid.

Analysis and Determination:

66. I have reviewed the pleadings, and the evidence on record, I have also considered the written submissions filed on behalf of the respective parties. There are two claims in this suit which are independent of each other but involving the same 1st Defendant. The 1st claim is by the Plaintiff as against the 1st Defendant for trespass over Plot C23 and the second claim by the 2nd Defendant as against Co-defendant (1st Defendant) claiming ownership over Plot C20, C21 and C45.
67. Thus, the issues I frame for determination before this court are as follows;
- a. Whether the 1st Defendant has trespassed on Plot C23 owned by the Plaintiff.
 - b. Whether the 2nd Defendant has proved ownership of Plot C-20,21 and 45
 - c. What orders the court ought to grant in the circumstances?
 - d. Who bears Costs in both claims

a. Claim for trespass over plot C23

68. It is the Plaintiff's case that he purchased his plot C-23 vide a sale agreement dated 11/5/199 from the 2nd Defendant. That after payment of the full purchase price which was Ksh.100,000, he was issued with a certificate by the 2nd Defendant certifying him as the owner.
69. Also, in support he produced an allotment letter dated 13/9/2003 from Nairobi City County government and receipts showing full payment and another certificate date 5/5/2013 from the 2nd Defendant confirming his ownership of Plot C23. The 2nd Defendant confirmed the Plaintiff's claim on Plot C23 and the 1st Defendant's case is that he does not claim ownership of the said plot.
70. From the evidence adduced, the dispute is more of trespass and not ownership. I say so because in contesting the Plaintiff's claim, the 1st Defendant also produced ownership documents in respect to plot C-20 and C-21. The Plaintiff admits in his testimony that the 1st Defendant owned a plot in this area where he had constructed a bar. Further, the 2nd Defendant confirms that the 1st Defendant was granted plot C-20 but he lost rights over it when he failed to pay the purchase price of Kshs 100,000.
71. According to the Plaintiff, the 1st Defendant did not have a space for parking for his customers and he (the 1st Defendant) therefore requested him to allow use of plot C-23 as a parking. Since the 1st Defendant has denied occupation of the suit plot stating instead that he is occupying his two



plots numbered as C-20 and C-21, the legal burden shifted on the Plaintiff to prove on a balance of probabilities the act of trespass.

72. The Court of Appeal decision in *Charles Ogejo Ochieng v Geoffrey Okumu* [1995] eKLR, Tunoi, Akiwumi & Lakha, JJA (as they then were) took a view that “Trespass is an injury to the possessory right, and therefore the proper Plaintiff in an action for trespass to land is the person who has title to it, or a person who is deemed to have possession at the time of the trespass.”
73. Section 3(1) of the *Trespass Act* defines trespass as;
- “(1) Any person who without reasonable excuse enters, is or remains upon, or erects any structure on, or cultivates or tills, or grazes stock or permits stock to be on, private land without the consent of the occupier thereof shall be guilty of an offence
- (2) Where any person is charged with an offence under subsection (1) of this section the burden of proving that he had reasonable excuse or the consent of the occupier shall lie upon him.”
74. In this instance the 1st Defendant argues that he is in possession of his land and not the land claimed by the Plaintiffs. It is my considered view that for the Plaintiff’s case to succeed, he must prove that occupation of the 1st Defendant on the ground is on C-23 and not on the two plots he claimed. Alternatively, the Plaintiff must prove that the ownership documents for C-20 and C-21 are forgery overlaid on plot C23.
75. On the first limb, the Plaintiff only produced his documents showing how he acquired the plot C-23. The closest he mentions evidence of occupation is reliance on photographs of some building materials which cannot be used to ascertain who deposited them and on which plot. Secondly, the Plaintiff having stated that the 1st Defendant owned a neighbouring plot where he carried business, he ought to have presented an expert report to demonstrate that the 1st Defendant’s development is on both C-20 and C-23. In the absence of such evidence, I find the act of encroachment complained of not founded.
76. On the second limb of whether the 1st Defendant’s ownership documents are valid or otherwise, the claim as presented did not plead any particulars of illegalities as required under order 2 of the Civil Procedure Rules. What is pleaded are the particulars of negligence against the 1st Defendant. The Plaintiff relied on the evidence of the DW2 who said 1st Defendant’s beacon certificates were not traceable to their offices. DW2’s evidence was limited to the beacon certificates which according to him were not issued by their office. However, in re-examination the witness affirmed that their scheme map was similar to the plan shown in the beacon certificates produced by the 1st Defendant.
77. No evidence was led to state that the 1st Defendant’s allotment letters were a fraud and if any was a fraud, it could only be for plot C-21. This is because the 2nd Defendant allegations that they sold C-20 to the 1st Defendant except that he failed to fulfil the said conditions only corroborates the authenticity of plot C-20. In the written statement of Michael Kimunyu Kacago dated 10th July 2023, he states at paragraph 6 that he was allotted plot C21 while Jacob Omwange was allocated plot C23 thus affirming the existence of both plots. Having produced the letters of allotment and payments for ground rents to the Nairobi City Council, I find no basis to hold that the 1st Defendant’s plots donot exist.
78. In light of the analysis I have stated herein, my answer to the first question is that the Plaintiff’s claim against the 1st Defendant is not proved. He also did not lead any evidence of trespass against the 2nd



Defendant. In fact, the Plaintiff said he had no problems against the 2nd Defendant so I make no finding against the 2nd Defendant.

b. Whether the 2nd Defendant is entitled to plot C-20 and or C-45

79. It is the 2nd Defendant's case that they sold to the 1st Defendant plot C-45 which he (the 1st Defendant) has converted to C-20. The 2nd Defendant relies on an agreement dated 23/1/2003 produced at page 36 of their bundle. The said sale agreement refers to plot C-20 and it was self-executing at paragraph (iv) and (v) which stated thus;

- “ (iii) that he has already started to develop it
- (iv) that he will pay before 31/3/2003.
- (v) that if he fails to pay within the agreed time, he will take the responsibility of removing any structures erected on the plot”

80. The sale agreement being relied upon by the Plaintiff by way of counter-claim is at variance with their pleadings on allegations of fraud levelled against the 1st Defendant. For instance, paragraph 18 of the counter claim reads as follows;

“ upon filing the suit, the Plaintiff by way of counter-claim has discovered that the defendant has defaced the mapping and the grounds by illegally changing the plot numbers to C20 and C21 which the defendant (by way of counter-claim) now purport to be his plots, whereas there are no plots C-23 and C45 as per the actual/original mappings”

81. The sale agreement speaks to the existence of plot C20 as early as the time of sale so that the allegation of the 1st Defendant defacing the mappings would require proof. Secondly the counter-claim impleads to non-existence of plots C20 and C45 yet the 2nd Defendant confirms selling plot C23 to the original plaintiff (Jacob Omwange). Whereas the counter-claim is pleaded to be on behalf of the 2nd Defendant as a self-help group, DW3 in his written statement avers that he was allocated plot C-21 in his individual capacity. DW3 has not made a direct claim against the 1st Defendant.

82. Is the 2nd Defendant entitled to plot C-20? If the claim is premised on non-payment of the purchase price, then they ought to have caused the removal of the 1st Defendant by 31/3/2003. As correctly pointed by the defendant by way of counter-claim, the claim is time barred both under the provisions on contract and under the claim for land. The *Limitation of Actions Act* cap 22 set time limits for bringing such claims to six (6) years and twelve (12) years respectively. The counter-claim was filed on 7th March 2023, twenty years after the cause of action arose.

83. Despite the time-bar, the claim is also not supported by sufficient evidence. At page 25 of the 2nd Defendant's bundle is a map which gave plot numbers including plot numbers C20, 23 and 45 with plots C-23 and C45 averred not to have existed in the original map. However, the said original mappings without these two numbers were not produced. The burden was on the shoulders of the 2nd Defendant who is the plaintiff by way of counter-claim to prove but what they placed before the court were mere assertions. It is noteworthy that the 1st Defendant does not claim ownership of Plot C45 which brings the contested Plots to be C20 and C21.



84. It is trite law that he who alleges must prove. Section 107 (1) of the *Evidence Act*, Cap 80 Laws of Kenya, provides that: -

“Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.”

85. In *Anne Wambui Ndiritu vs Joseph Kiprono Ropkoi & Another* [2005] 1 EA 334, the Court of Appeal held that:-

“As a general proposition under Section 107 (1) of the *Evidence Act*, Cap 80, the legal burden of proof lies upon the party who invokes the aid of the law and substantially asserts the affirmative of the issue. There is however the evidential burden that is case upon any party the burden of proving any particular fact which he desires the court to believe in its existence which is captured in Sections 109 and 112 of the Act.”

86. Further in the case of *Mbuthi v Osman & another* (Environment & Land Case E004 of 2022) [2024] KEELC 387 (KLR) (1 February 2024), Mogeni J. held that;

“Proof of ownership of land is found in documentary evidence which lead to the root of title. There must be shown an unbroken chain of documents showing the true owner. Once proof of ownership is tendered then the holder of the documents is entitled to the protection of the law. There is no doubt that such proof will be on a balance of probabilities, but the court must be left in no doubt that the holder of the documents proved is the one entitled to the property.”

87. As already stated earlier in this judgement, the 1st Defendant asserted his ownership of Plot C20 and C21 by producing allotment letters dated 13th November 2003. In the two sets of lists of documents filed by the 2nd Defendant dated 7th March 2023 and 23rd February 2024 no letters of allotment were produced though item 3 in the first list referred to one. During cross examination, DW3 confirmed that the 2nd Defendant had not produced any allotment letter and or title.

88. Hence, the 2nd Defendant has failed to produce any document to contradict the 1st Defendant’s proof his ownership of the contested Plots C20 and C21. In the upshot, I hold that the 2nd Defendants counter claim dated 7/3/ 2023 is without merit and is hereby dismissed.

89. In conclusion, I find and hold that both claims by the Plaintiff (Jacob Omwange Ayora) and the 2nd Defendant (Jada Self-Help Group Komarock/Saika Center-Nairobi) lacks merit and are hereby dismissed. The cost in both claims awarded to the 1st Defendant (Peter Boniface Njiru).

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 29TH JULY, 2025.

A. OMOLLO

JUDGE

