REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NYANDARUA

ELCLC NO 13 OF 2023

KEZIAH WANJIRU KURIA.....PLAINTIFF.

(suing as the legal representative of the estate of WANGARI MWANGI (Deceased)

VERSUS

SETTLEMENT FUND

TRUSTEES.....1ST

DEFENDANT.

GRACE NYAMBURA NDIRANGU
WALTER WAMBUGU NDIRANGU
(sued as the legal representatives of the estate of JOSEPH NDIRANGU MWANGI (Deceased)**.....2nd**
DEFENDANT.

JUDGMENT:

In the Plaint dated 15/4/2013 and amended on 19/2/2018 the Plaintiff, Keziah Wanjiru Kuria (who is also now deceased) filed this case vide a Grant of letters of Administration *Ad litem* obtained in Nakuru High Court Succession Cause No. 35 of 2023 in respect of her late mother, Wangari Mwangi who died on 26/6/1968. She filed this suit as the legal representative of the Estate of the late Wangari Mwangi against the Settlement Fund Trustees and Joseph Ndirangu Mwangi claiming a beneficial interest of all that parcel of land known as NYANDARUA/OL KALOU SALIENT/342 measuring 3.8 Hectares or thereabout. She averred that the late Wangari Mwangi was the legal allotee of the parcel of land having been given initially as No. NYANDARUA/OLKALOU SALIENT/1513. The letter of allotment is dated 11/7/1973. Unfortunately, the 2nd Defendant, Joseph Ndirangu Mwangi

died before testifying on 3/11/2020 and was substituted by Grace Nyambura Ndirangu and Walter Wambugu Ndirangu on

17/3/2021 vide an Application dated 5/2/2021.
Likewise, Keziah Wanjiru Kuria did not also live to see the conclusion of this case as she died on 25/6/2021, but after she had testified, and was substituted by Munyua Wainaina Ng'ang'a vide a Notice of Motion Application dated 4/7/2022 on 26/9/2022.

In the Plaint, the Plaintiff averred that her late mother was a registered member of Lombard Farm bearing membership number F0608 and beneficiary of plot No. 1513 of Unit No. 355 at Ol-kalou Salient measuring 3.8 Hectares or thereabout which was later registered as Title No. NYANDARUA/OL-KALOU SALIENT/342 where the late Wangari Mwangi was buried.

The Plaintiff avers that all this time, she has been tilling and farming on the suit land and has been trying to obtain the relevant Title documents for the ownership of the parcel of land, albeit unsuccessfully.

In 2001, she came to learn that the 2nd Defendant had obtained a Title Deed in respect of the suit land. This was after her brother, Stephen Kariuki Mwangi was arrested and charged in Nyahururu PMCC Criminal case No. 303 of 2001 with obtaining money by false pretenses on account of the sale of a portion of the suit land.

In the criminal case, the Court ordered for further investigations into the ownership of the suit land by the Criminal Investigations Department and the Criminal Case was terminated when the 1st Defendant wrote a letter on 6/3/2022 in which it was indicated that the 2nd Defendant would surrender the suit land in lieu of getting an

alternative land and as a result of this, the Criminal case was terminated. The surrender never came to be.

The Plaintiff claims that for the suit land to be registered in the name of the 2nd Defendant, the same was perpetuated through fraud or mistake.

She further claims that she has been on the suit land quietly and enjoying the land without any interruption for a period of over 12 years thereby acquiring Title by adverse possession and asks the Court to declare her the registered owner of the land through Adverse Possession or cancel the same and have it registered in the name of the Plaintiff.

In the 2nd Defendant's further amended Defence dated the 10/1/2021 originally dated 13/6/2013 and first amended on 15/3/2018, Grace Nyambura Ndirangu and Walter Wambugu Ndirangu filed a Defence as

the legal Representatives of the Estate of Joseph Ndirangu Mwangi who died on 3/11/2020 having obtained letters of Administration Ad litem in Nyahururu High Court No. E02 of 2020 on 17/12/2020.

They denied that the Plaintiff had obtained the ownership of the suit land and further averred that even if the Plaintiff's mother was a registered member of Lambard Farm, the old number of the suit property was 747 and not 1513 or 355 and that their late father, Joseph Ndirangu Mwangi was and is still the rightful owner of the suit property and even had a certificate of Title for NYANDARUA/OL-KALOU/342 issued to him on the 1/4/1998. Having had the land rightfully allocated to him by the Director of land and Adjudication and a Title Deed to the land issued after all the requisite fees were paid, that there was no fraud or mistake in his acquisition of the land and that the Plaintiff has no legal right over the land.

In the 1st Defendant's statement of Defence dated 4/3/2019, the Settlement Fund Trustees averred that the Plaintiff's interest/right to the suit land were terminated via a Notification dated 24/4/1996 wherein the allocation of the plot to the deceased, Wangari Mwangi was cancelled for failure to meet pre-requisite conditions set out by the Trustees after he had been given ample time to remedy the breach of the allocation

conditions before the cancellation of the Title and after occupying the land without meeting the conditions. He further said that the transaction giving Title to land to the 2nd Defendant was above board and not punctuated by fraud. The latter allocation was regular following due diligence. Both Defendants therefore pleaded with the Court to dismiss the suit with costs.

The hearing gates of the case were opened on 21/5/2019 when Keziah Wanjiru Kuria, born in 1950, took to the witness stand and produced the Grant of Letters of Administration *Ad Litem* in respect to the estate of her late mother, Wangari Mwangi.

She said her mother died on 26/6/1968. She said she and her mother used to live in a native village until the white settler who owned this entire land, Hendrick left a list of the people working for him asking the Government to allocate them land. Her mother was in the list which she produced in Court as exhibit 2. She was given a membership No. 0608. The land belonging to Hendrick was known as Lambard Farm. Her mother was given land No. 1513 in unit 335. She produced a letter to this effect. Her mother settled on the land and since she was unable to pay the requisite Kshs. 500/-, Keziah was employed by the Salient Board at Kshs. 39/= per month. Kshs. 20/- per month was deducted from her monthly salary to pay for the land

and the balance of Kshs. 19/- was given to the employee/allotee (to Keziah).

The Plaintiff took up the job because her mother was too old and sickly and later died and was buried on the suit land and at no time were they served with any Notice of repossession from the Settlement Fund Trustees or from any other quarter. Her brother, Stephen Mwangi was arrested and arraigned in Court for trespass but the CID wrote a letter to Court to set him free so that the 2nd Defendant could be given an alternative land. She said they have developed the land by building a house on the land which they farm but the 2nd Defendant was given a Title Deed for the same. She denied any knowledge of the letter dated 24/4/1966. The following documents were produced by the Plaintiff:

1. Copy of the membership card for Lambard Farm.
2. Register of death.
3. Copy of a Declaration/Agreement of individual member.
4. Letter from District Land Adjudication and Settlement Office dated 19th August, 1998.
5. Payment receipts.
6. Petition for Limited letters of Administration Ad Litem.
7. Copy of the Limited Grant of Letters of Administration Ad Litem.
8. Copy of the Certificate Search.

In cross-examination by Mr. Weche, Ms. Wanjiru Kuria said that she was a grown up at the time of her mother's death and that the settler who was living on the land gave her mother the land as he was leaving the country. They were given photographs by the Government and not letters of allotment. Since they took possession of the land in 1966 it has never been vacant. They have all along

lived thereon and there is a fence around the land. She said she paid a total of Kshs 575/- and that the last payment of Kshs 95 was made in 1987 and that they came to know the land had ben given to somebody else in 1999.

In cross-examination by Mr. Opar, Ms. Kuria said she balloted for the

Ms. Kuria said that the question of allocation was not in dispute nor the repossession and re-allocation. She said she had not gone for the Title Deed all this time since she did not have money to pay for the document. And she said she could not remember when she fenced the land.

On re-examination by Mr. Chege, Wanjiru Kuria said they had been given

the land before the letters were issued and that her mother had already been given the land before she died. This was in 1966, 2 years before she died in 1968.

They never received any demand letter from the SFT. They came to know the Title Deed had been issued to somebody else when her brother was arrested and arraigned in Court.

Having closed the case for the Plaintiff, the Defendants opened their case with Lawrence Karunge Ndun'gu testifying as the 1st Defendant's witness. A civil servant with the Ministry of Lands and Physical Planning in charge of land Adjudication and Settlement in Nyandarua North, the witness came with the parcel file in respect to NYANDARUA/OL- KALOU/

SALIENT/342. He testified that the land was allocated to Joseph Ndirangu Mwangi on 29/4/1996 after it was repossessed from Wangari Mwangi. He said that there was no letter of allocation to Wangari Mwangi in the file. He said it was repossessed because of

failure to pay the necessary dues. He said that the Notice of Repossession was issued to Wangari Mwangi of P.O. Box 129 Nyahururu on 31/10/1995. He produced the letter of repossession.

The letter was also copied to the Permanent Secretary of land and Settlement and the District Land and Adjudication officer of P.O Box 34128 Nyahururu. He said he could not trace the Register of mails and could therefore not confirm whether the said letter reached the addressee. The cancellation of the earlier allocation was on 24/4/1996. Joseph Ndirangu Mwangi had applied for allocation on 4/1/1995 and he complied with the conditions by paying a total of Kshs. 13,095/-. He produced the following documents to back up the Defendants' case: -

1. Payment documents.
2. Letter of offer dated 29/4/1996.
3. Discharge of charge.
4. Transfer in favour of Joseph Ndirangu Mwangi.
5. Ground Status Report dated 13/2/1998.

On cross-examination by Mr. Opar for the 2nd Defendant, the witness said that the Ground Status Report showed that there was no fence, no home, but that there was cultivation of maize and potatoes but it was not established who was cultivating and that it was shown the late Wangari had been allocated the land. He said Wangari was tilling the land and that she was not paying the loan.

On cross-examination by Mr. Gakuhi Chege, the land Adjudication and Settlement Officer said he did not have the original parcel file but only copies – a skeleton file, since he could not get the original file. He admitted his file was not complete. The file showed that the land

must have been allocated to Wangari Mwangi. Joseph Ndirangu specifically applied for plot No. 747 Ol-kalou Salient scheme. By this time,

cancellation had not been done. cancellation was done1 year after the Application. The Notice to remedy the breach was on 31/10/1995, after the Application. The address for communicating the Notice was that of the Lands' office. He said he did not have any evidence that the letter reached the addressee. He further said that the Ground Status Report confirmed there was cultivation but not by who. He admitted that the Notice to meet the conditions and the cancellation of the initial allotment had alterations of the dates (years). You can't tell the years and the alterations were not counter-signed. It is in ink yet the earlier dates were in print. He said he couldn't tell who did the alteration. He also admitted that there was no receipt of the payment of the Kshs. 13,095/20 by the 2nd Defendant and that the same was made on 8/12/1997, more than

one and a half years after the demand.

The witness said he could defend the allocation in spite of the many anomalies. When asked by the court, Mr. Ndun'gu said he could not tell whether the land had been fenced, cultivated or settled on. He said he could not tell how Mr. Mwangi came to know that the conditions for this land had not been met but that there was a possibility of an insider leaking this information to Mwangi.

The suit land i.e. NYANDARUA/OL KALOU SALIENT/342 is in Ol Kalou Salient Scheme, one of the 55 Settlement Schemes in Nyandarua County.

Before proceeding further in this case, I must say that postcolonial smallholder settlement schemes is epitomized by the Million Acres

Scheme, initiated in 1962. Smallholder settlement schemes played a central role in Kenya's transition to independence, helping to de-racialize land ownership in the former “White Highlands” and offering land to many who had been displaced in the struggle against British colonial rule of the1950s.

Leveraging these new empirics, the creation of new smallholder settlement schemes under the auspices of the Ministry of Lands has remained a central pillar of the Kenya Government's efforts to manage problems of landlessness, land hunger, and internal displacement. As in many African countries, state allocation of farmland in Kenya remains a central component of a contested social contract that binds the postcolonial state to citizens. By official count, almost 300,000 families have been settled on 1,280,000 Hectares of land (3.1 million Acres) since 1962. With the approach of independence, the settler state and the British Government stepped in to protect the interests of Kenya's white landowners by creating a land market for white settlers

who wanted to sell their agricultural holdings, and supporting land values for those who wanted to stay. The buyer of most of these properties was the Government of Kenya, using loans provided by the British Government and the World Bank. Between 1963 and 1971, approximately half of the land that had been acquired by the Kenya Government was parceled up in settlement schemes created principally for Kenyan smallholders. The official rationale and justification was to sustain and indeed propel agricultural development as small- and medium-scale African farmers took over former mixed farms, including land that had been underutilized or abandoned by white settlers.

Different types of Settlement Schemes were established, including the One Million Acres Scheme, Yeoman Schemes, Z Schemes, Haraka Settlement Schemes and others.

The Settlement Schemes of the 1960s and 1970s were divided into categories by level of production and plot size, namely low-density schemes and high-density schemes. The first were mainly for financially and educationally qualified Africans, and were financed by the Commonwealth Development Corporation (CDC) and the World Bank (IBRD). These schemes were the result of agreement by the British Government out of the 1960 Lancaster House Constitutional Conference, which provided for large-scale land transfer for both political and economic reasons.

The Government of Kenya continued creating Settlement Schemes after the 1970s. Indeed, approximately half of the more than 500 schemes that exist in Kenya today were created after 1980. According to the Ministry of Lands and Physical Planning records by 2018, a total of 505 Settlement Schemes had been established. They cover an area of 1,279,724.1 Hectares with over 282,783 families settled.

According to a paper titled ***“Promised Land: Settlement Schemes in Kenya, 1962 to 2016”*** authored by
Catherine Boone, Fibian Lukalo and Sandra F. Joireman, 84 separate schemes of about 1250 Hectares each were designed as either “low density schemes,” divided up into parcels of 8–16 Hectares for commercially-oriented farms that employed wage labor, or “high density schemes” that were subdivided into parcels of 4–6 Hectares intended to be peasant farms that combined cash cropping and subsistence farming and relied mostly on household labor, supplemented in some cases by wage labor. Scheme beneficiaries

were selected by government officials and appointees at the District level. Most but not all the allottees signed for loans advanced through the official Settlement Fund to cover part of the cost of their parcels. The loans were to be paid off from farm proceeds, culminating eventually in the issuance of land Title Deeds.

The early 1970s marked “the final phases of the British-financed buy-outs of mixed farms." By that time, 21% of the colonial-era Scheduled Areas (formerly White Highlands) had been redistributed to Africans under the official settlement programs.

Besides the first settlement schemes of the 1960s and 1970s, there were subsequent settlement schemes including land given to internally displaced persons, a number of whom are settled in Nyandarua County.

I have laid this historical background in order to show how vulnerable most of the people settled in these schemes were, coupled with the fact that many were not economically endowed, that the landless people who were given land by the Government, including the Plaintiff herein, as opposed to those who bought land through their money or through loans, were struggling in life. Such people needed assistance from the

Government to engage in sustainable farming, even for subsistence. To demand that such people fence their parcels of land failure to which their lands are repossessed was so ridiculous, to say the least.

Having heard the parties and their witnesses, I wish to analyze first the Defendant’s evidence. To begin with, the Land Adjudication officer did not produce the letters of allotment to Wangari Mwangi. This was calculatingly missing in the file. The reason is that for his Ministry to have issued a Notice of Letter of Repossession to Ms.

Mwangi, then there must have been a letter of Allotment. He admitted on cross-examination that he did not have the original parcel file but only a skeleton file and that the original file was missing. The only logical conclusion to draw from this evidence is that the original file must have been hidden by his office in order not to disclose all the facts, including what was contained in the letter of allotment.

Mr. Ndung'u could also not lay his hands on the register of mails and this therefore casts doubt as to whether any Notice of Repossession was ever sent to the Plaintiff. Of course, even if it had been sent, which I highly doubt, the addressee's postal No. was indicated as P.O. Box 129, Nyahururu which was the address of the Land Adjudication and Settlement office, Nyandarua and which was not the Plaintiff's abode. It is not shown that whoever received it at the Land Adjudication and settlement office handed it over to Ms. Mwangi. Whoever conducted what became the Ground Status Report must have gone to the land to do the exercise. If this were done, what was so difficult in hand delivering the letter containing the Notice of Repossession to the person occupying the suit land. Had she been informed, I am sure that the Plaintiff would have made efforts to look for the Kshs. 13,095/= to pay to the Settlement Fund Trustees in order not to lose the land. Even if it meant borrowing the money from friends and well-wishers and in any case, there is no evidence that the Plaintiff ever received any such loan or any at all from the Settlement Fund. It raises quite great suspicion that all the documents supporting the allocation of the suit land to the Defendant were brought to Court but the important documents in support of the Plaintiff's case were all missing from the file yet they were all in the same parcel file. This is a clear case of collusion between the Defendant and the Land Adjudication and Settlement officials.

On cross-examination by Counsel for the 2nd Defendant, the Land Settlement official admitted that the Ground Status Report showed that there was cultivation of maize and potatoes on the suit land and he was quick to admit the same was not by the 2nd Defendant and that it had been established that Wangari had been initially allocated the land. What was so difficult in establishing who was cultivating the land. In the Ground Status Report dated 13/2/1998 to the Director, Land Adjudication and Settlement, it is submitted that at the time of the visit, he could not be able to know who had grown the maize and potatoes. The witness later admitted that Wangari Mwangi's family was tilling the land.

This Land officer also confessed that his file was incomplete but he admitted that the land had initially been allocated to Wangari Mwangi as shown in the file.

He further said that the Defendant, Joseph Ndirangu specifically applied for plot No. 747 Ol-kalou Salient Scheme when cancellation of its allocation had not been done. Then 1 year later he was allocated the same land. This must have been as a result of the maneuvers, intrigues, conspiracies and collusion to have the same repossessed and re-allocated to him, albeit unlawfully. I say unlawfully because the Notice of Repossession of 31/10/1995 was also after the Defendant's Application to be allocated the same land. Mr. Ndun'gu said in cross-examination

that he was not sure the letter of repossession reached the late Wangari Mwangi. Of course, with an address that was not hers and one that belonged to the sender of the letter, there is no way it could have reached her and in any case, she was long dead.

The author who altered the Notice of repossession letter and the latter one for cancellation of the allocation to the Plaintiff is not

known. Although the Application from the Defendant, Joseph N. Mwangi, for the allocation of the suit property in handwriting has a date showing 4-1-95, the last digit (5) is an alteration.

The same is the case with the typed letter referenced “NOTICE TO REMEDY BREACH OF CONDITIONS”. The same is signed by C.N. Wambugu for Director of Land Adjudication and Settlement. The letter is typed but the date 31/10/95 is altered in pen and not countersigned, and the subsequent letter from the same office dated 29/4/1996 from the Department of Land Adjudication and Settlement this time signed by A.K. Tomno, the Director himself refers to the altered letter but not quoting its date. Likewise, the printed letter of cancellation of the allocation to Wangari Mwangi c/o P.O. Box 129, Nyahururu also has an alteration, which is handwritten- 24/4/96. The last digit seems to have been initially 7 but later changed to 6 and to show how inhuman some officers from the land’s office were, all this was happening in spite of a letter dated 16/3/1978 from the Assistant Chief, Gichungo sub-location indicating that Wangari Mwangi had long died on 26/6/1968 but left some young children painting a very vulnerable situation.

This had been communicated to the Director of Land and Settlement by the Deceased’s daughter vide letter dated 5/3/1998 which letter was also copied to the Minister. One of the people who seemed to have a heart was one Lucy W. Ndiho for the Director of Land Adjudication and settlement

who wrote to the District Settlement Officer, Nyahururu on 18/5/2000 and asked the latter to urgently look for an alternative plot to help solve the problem once and for all. I believe the alternative plot was either to the Plaintiff or the Defendant.

And on 30/4/2001, the P.C.I.O, Central wrote to the D.C.I.O Nyandarua, wondering what procedures were used to allocate this land to the 2nd Defendant. Of course, this letter never received the benefit of any reply nor the courtesy of an acknowledgment since the die had already been cast.

Following this letter was also another one from the same officer, T.J. Nyangari for District Settlement Officer to the Director of Land Adjudication and Settlement dated 1/12/1999 which indicated that there were developments on the suit land by Wangari Mwangi's son, Stephen Kariuki Mwangi which included: -

a. One semi-permanent house (iron sheeted) with mud walls.
b. Partly fenced with barbed wire and cedar posts.
c. Approximately 4 Acres under cultivation of food crops.

Although this indicated that all the developments were carried out in the month of June 1998. Of course, this was after the Ground Status Report but before the re-allocation and therefore it ought to have been considered. Specifically, on 6/10/1999, the Acting Director of Land Adjudication and Settlement asked the Land Adjudication and settlement officer, Nyandarua to give him a detailed Ground Status Report. Earlier, on 3/5/1998, the District Officer in Ol-kalou admitted that the family of Wangari Mwangi had not received any Demand Notice for repossession. But an officer by the name of Omari Momanyi for the Director of Land Adjudication and Settlement was always writing letters contrary to his colleagues' observations on the ground.

The most important condition to be met for the allocation and acceptance of Settlement land, of course to the landless, was cultivating and the Plaintiff's evidence that it was the late Wangari Mwangi and her family who were cultivating the land was not challenged. In fact, the 1st Defendant's witness said the land was

cultivated but could not say by who. But when pushed further in cross-examination, he admitted that the Plaintiff's family were occupying the land and were the ones cultivating it.

Having shown that the Plaintiff's late mother Wangari Mwangi through her daughter had paid all the requisite money being a condition for the allocation of the land way back in 1987, had cultivated the suit land, partly fenced it and also developed the land by putting up semi-permanent houses, and there is no evidence that such Notice was ever issued to pave way for repossession, one wonders how such repossession could take place. The 1st Defendant with all the records at his disposal does not even in a statement (whether in the oral evidence or written statements) indicate the amount of the loan advanced to the Plaintiff and when it fell due or whether it was ever given or not. What appears to be the case here is that the 2nd Defendant was aware the late Wangari Mwangi had died more than 30 years earlier and that her children were not financially stable and were very vulnerable. He went and obtained a Title Deed in respect to the suit land L.R. No. NYANDARUA/ OL KALOU SALIENT/342 through connivance with Land Officials and after the same was issued, he barefacedly started harassing the Deceased's son, Stephen Kariuki Mwangi.

On the issue of service, in Thananga -Vs- Nyagah & 2 Others

(Environment & Land Case 100 of 2023 [2023] elc 22011 (Klr) (30

November 2023 (Judgement), the Court held as follows:-

> ***"…….The Court is thus of the opinion that in the absence of any evidence of service of the requisite notices upon the 3rd Defendant the purported repossession and sub-division of Plot 588 was***

irregular, unlawful and of no legal consequences and did not extinguish the 3rd Defendants' interest over Plot 588……..."

As shown above, I have indicated that there was no service of the Notice of Repossession and that the letter that is said to have been written and sent to an address that did not belong to the Plaintiff but to the 1st Defendant's District office does not indicate what amount of money was

being demanded.

The other condition is the one I have explained as morally wrong. That of fencing the land. Nevertheless, according to the letter dated 1/12/1999, the same was partly met. I shall come to this condition later.

The other 2, as explained by Government officials and contained in the aforementioned letter, i.e. that of residing on the suit land and cultivating it, were both met.

When the Government is repossessing land, it ought to bear in mind the provisions of Article 60 of the Kenya Constitution, 2010 which identifies the following as key principles informing Kenya's land policy:

i) Equitable access to land;
ii) Security of land rights;
iii) Sustainable and productive management of land resources;
iv) Transparent and cost-effective administration of land;
v) Sound conservation and protection of ecologically sensitive areas;

vi) Elimination of gender discrimination in law, customs and practices related to land and property in land; and

vii) Encouragement of communities to settle land dispute through recognized local Community initiatives consistent with this Constitution.

And Article 40 of the Constitution of Kenya, 2010 provides that: -

(1) Subject to Article 65, every person has the right, either individually or in association with others, to acquire and own property—

(a) of any description; and

(b) in any part of Kenya.

(2) Parliament shall not enact a law that permits the State or any person—

(a) to arbitrarily deprive a person of property of any description or of any interest in, or right over, any property of any description; or

(b) to limit, or in any way restrict the enjoyment of any

under this Article on the basis of any of the grounds contemplated in Article 27(4).

(3) The State shall not deprive a person of property of any description, or of any interest in, or right over, property of any description, unless the deprivation—

(a) results from an acquisition of land or an interest in land or a conversion of an interest in land, or title to land, in accordance with Chapter Five; or

(b) is for a public purpose or in the public interest and is carried out in accordance with this Constitution and any Act of Parliament that—

(i) requires prompt payment in full, of just compensation to the person; and

(ii) allows any person who has an interest in, or right over, that property a right of access to a court of law.

(4) Provision may be made for compensation to be paid to occupants in good faith of land acquired under clause (3) who may not hold title to the land.

(5) .....

(6) The rights under this Article do not extend to any property that has been found to have been unlawfully acquired.

The procedure for land allocation by the Settlement Fund Trustees (SFT) involves a structured process of identifying landless Kenyans, planning and surveying the land, and eventually transferring ownership upon fulfillment of specific conditions, including loan repayment.

The Procedure of Land Allocation in settlement schemes is as follows:

1.Identification and Acquisition of Land: The process begins with the identification of public land for a settlement scheme by the national or county government. If public land is not available, the SFT Board may acquire private or community land for the purpose.

2.Planning and Survey: The SFT Board requests the relevant survey authority to prepare a base map. The land is then planned, surveyed, geo-referenced, and serviced into individual parcels.

3.Establishment of Selection Committee: A sub-county selection committee is appointed by the Cabinet Secretary for Lands to identify and verify potential beneficiaries.

4.Identification and Verification of Beneficiaries: The committee vets applicants (e.g., squatters, displaced persons,

the poor and landless) to ensure they meet specific eligibility criteria, such as not owning land elsewhere or not having benefited from a previous settlement program.

5.Preparation of Beneficiary List: The committee prepares a list

of proposed beneficiaries and submits it, along with meeting minutes, to the SFT Board for approval.

6.Determination of Land Cost: Upon approval of the beneficiary list, the Board determines the cost of the land, which may include the purchase price, administrative costs, and other associated fees. The Board may charge a nominal fee.

7.Allocation of Land: The actual allocation of specific parcels can be done through a public drawing of lots (balloting) or direct allocation based on the verified list, in the presence of relevant authorities.

8.Issuance of Offer Letters: Successful beneficiaries are issued an official offer letter that outlines the terms and conditions of the allocation, including the total cost and repayment schedule (often in half-yearly installments over a period such as 28 years).

9.Loan Repayment: The parcel remains under the charge of the SFT until the full loan amount and any associated costs are repaid by the settler.

10.Issuance of Title Deeds:

- Upon the full payment of all monies due, the SFT prepares and issues a **Discharge of Charge** certificate and land transfer documents.
- The beneficiary then takes these documents to the relevant District Land Registry, pays stamp duty and registration fees, and is finally issued with a **title deed**.
- If the settler completes repayment before the scheme is fully registered, the SFT issues a certificate of outright purchase as an interim document.

As I held in **NYANDARUA ELC APPEAL CASE NO. E018 OF 2024 STEPHEN NJENGA MWANGI and Another VS HEZEKIAH MUHIA NJOROGE,** if one MUST lose land through repossession,

1. There must be a Notice preceding the repossession.
2. The Notice must be quite clear and unequivocal as to the reason(s) for the repossession.

3. The Demand must be communicated in the most effective way in order to ensure that the land owner has received the Demand and to avoid doubts, personal service is to be preferred.
4. The Demand Notice should be detailed enough to indicate the

   parcel Number and if the reason for repossession is non-payment of a loan, premiums or any other payments, the specific amount must be correctly indicated.
5. The property owner must be given reasonable time to pay up and redeem the property.
6. The defaulting party must also be invited to make proposals on how to clear the outgoings.
7. The Decision of the Director of adjudication and settlement on repossession must be in writing and communicated to the land-owner in writing as well.
8. Under Article 35 (i) of the Constitution of Kenya, 2010 the land owner is entitled to the written Decision that repossesses his land and if the same is by a committee or group of people, the minutes of the meeting.

Once a person is registered as a proprietor of land, such as the 2nd Defendant herein, he is to enjoy all rights and privileges appurtenant thereto. Section 24(a) of the *Land Registration Act* states as follows: -

> “the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto”.

The rights of a proprietor are enshrined under Section 25 as follows: (1)

> “The rights of a proprietor, whether acquired on first registration
>
> or subsequently for valuable consideration or by an order of court, shall not be liable to be defeated except as provided in this Act, and shall be held by the proprietor, together with all privileges and appurtenances belonging thereto……”

Under Article 40 (6) above, any Title that is found to have been **unlawfully acquired**, like the one given to the 2nd Defendant in respect to parcel No. L.R. NO. NYANDARUA/OL KALOU SALIENT/342, cannot be protected. It is now settled law that for you to dislodge an earlier owner of land and acquire a clean Title, the principle of an innocent purchaser for value as the 2nd Defendant would want the Court to believe cannot apply where the root of the Title shows there was an owner with a clean Title. In the case of **National Land Commission v Afrison Export Import Limited & 10 others [2019] Eklr [2019] KEELC 2851 (KLR)** the Court held that:

“……A search on any title at the land registry is very important before one can act on it. The search indicates the owner(s) of a particular property and any encumbrances or other relevant entries registered against that land. Once a search is issued by the Lands Office, it should be conclusive evidence of proprietorship in light of the fact that our title registration system is based on the Torrens System of registration. However, a search may not always be a true reflection of the position as will be demonstrated below where two searches carried out in the same year showed different results…… Based on the inherent danger of the search system which is based on the Torrens System of registration, it is necessary for one to take further steps to ascertain the authenticity of the search and ownership of the land. ……. …… the Applicant should have, in the spirit of the Advisory Opinion of the Supreme Court in the matter of National Land Commission [2015] eKLR gone a step further to ascertain the true status of the title to the land in question…… We do not think the Applicant’s contention that it solely relied on the search when undertaking the compulsory acquisition of the land on which the two schools sit was diligent and pragmatic. This is because the theme of due diligence runs throughout Part VIII of the Land Act. Section 119 of the Land Act underscores the need to undertake due diligence before payment is made. Before compensation is paid, the Applicant is expected to ensure that a final survey is carried out and the acreage, boundaries,

ownership and value of the land determined. A reading of this section makes it clear that apart from a search, there were other steps which the Applicant was expected to undertake……”

On his part, the 2nd Defendant seems to belong to the class that believes that all you need to do on ownership of a parcel of land is to wave a Title Deed and claim that the land belongs to you. In the present case, he had not only done his homework well but was also well aware that the suit land belonged to the Plaintiff and with the connivance of some land officials, looked for excuses to have it unlawfully repossessed and to re-

allocate the same to him and also pay for the Title Deed.

Further, it is also not shown how the Defendant was identified and verified as a potential beneficiary to ensure he met specific eligibility criteria, such as not owning land elsewhere or not having benefited from a previous settlement program.

To give allottees a condition that to continue owning the parcels of land, they have to fence their lands is asking too much. To repossess such land for failure to fence the land yet they are in occupation and have marked their boundaries in one way or the other is to be out of reality with the class of people who were targeted when these schemes were formulated. It is even more ridiculous for the Director of Land Adjudication and settlement to send Demand Notices which

do not indicate what the outstanding loan is, if at all, then send the letter (allegedly) to his officers in Nyahururu and expect the holder of the suit land to receive it and immediately comply with the same albeit being unclear and ambiguous. In fact, failure to indicate the amount of loan and vaguely stating,

"……..that you have failed to pay the necessary dues……"

in the Demand Notice gives credence to Keziah Wanjiru Kuria's evidence that she had settled the requisite Kshs. 500/-, which was deducted from her monthly salary to pay for the land.

From the above letter, a number of Questions beg answers. What are the necessary dues? Is this synonymous with "the outstanding loan"? How much were the necessary dues?

Curiously, "the necessary dues" was only demanded once and before even the letter had been forwarded to the Plaintiff, the land had been repossessed.

It may be that as at the time of the demand, some conditions may not been met earlier on, but according to the letter dated 1/12/1999 from the District Settlement Officer, Nyandarua, these conditions were actually met. Curious also is the unorthodox manner in which issues of Title Deeds were conducted viz. by Telephone conversations between Wambugu and Birichi, (whoever they are) quoting a letter dated 27/3/1998, from Omari Momanyi, on behalf of the Director of

Land Adjudication and settlement to the District Land Registrar. And in 3 days' time of the letter, on 1/4/1998, the Title Deed is issued.

Having come to this conclusion, Section 26(1)(a)&(b) of the Land Registration Act, 2012 guides me on the need to protect the sanctity of a Title Deed but limits me where there is darkness,

> ***"The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be***
>
> ***taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and***
>
> ***indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except—***
>
> > ***(a) on the ground of fraud or misrepresentation to which the person is proved to be a party; or***
> >
> > ***(b) where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme*.**

The 1st Defendant misrepresented to the Land Registrar that the Plaintiff had not met the conditions attached to the letter of allotment to her in order to have the land repossessed from the Plaintiff and re-allocated to the 2nd Defendant and hence the acquisition of the same was illegal, unprocedural and through a corrupt scheme.

The proviso to this sacred Section has been brought out clearly in the monkeyshines and tomfooleries in this case. There are so many particulars of fraud, unprocedural and illegal procedures in the transfer of the Title in respect to L.R. NO. NYANDARUA/OL KALOU SALIENT/342 which is inapposite for the 2nd Defendant to hide behind and to aid and suit his selfish and self-centered interests and self-aggrandizement. A registered proprietor only enjoys the statutory protection of Title as long as he/she can show that the Title was acquired not only lawfully but also procedurally.

One must establish the root of the Title, that the same was acquired

legally and validly since whereas Title is conclusive evidence of proprietorship, the same can be challenged on the basis of fraud, illegality, or acquisition of the said Title through a corrupt scheme. In the case of **Munyu Maina Vs Hiram Gathiha Maina, Civil Appeal number 239 of 2009** the court held that: -

> ***"where a party's certificate of title is under challenge, it is not enough to wave the instrument of title as proof of ownership but prove the legality of how he acquired the title".***

In the case of **Esther Ndegi Njiru & Another =vs= Leonard Gatei [2014] eklr it was observed**:

> ***"the law is extremely protective of title and provides only two instances for challenge of title. The first is where the title is obtained by fraud or***

misrepresentation to which a person must be proved to be a party. The second is where the certificate of title has been acquired through a corrupt scheme".

My hands are therefore tied to one thing. Which is? To get recourse to Section 80 of the Land Registration Act, 2012 as follows: -

(1) Subject to subsection (2), the court may order the rectification of the register by directing that any registration be cancelled or amended if it is satisfied that any registration was obtained, made or omitted by fraud or mistake.

Finally, this Court reiterates the words of Juliana's song that:

"……kwa kupigana na ufisadi, ubinafsi

na ulafi, ningeomba sote tuwe tayari kulipa gharama

……sitasimama maovu yakitawala……."

This Court should stand firm to ensure that the rights of the less fortunate members of society are not down-trodden. They are equally protected. It would be a curse to seize from someone who lost her husband in 1950 and who was fortunate to get a piece of land having been landless and then when she is long dead, her children go back to landlessness. It is even more unfortunate when someone walks into the land's office and disregarding the fact that the Deceased's children are on the said land and are tilling it and that they have partly fenced it and settled there by putting up the only shelter they can afford, he dispossesses the said rightful owner.

And this rampant unlawfulness in Nyandarua has to come to an end, today and not tomorrow. I note that the Land and Administration Officials were divided, some trying to assist the Defendant dispossess the Plaintiff's children and others ready to defend the Plaintiff's Children's rights. To the latter I must say that is the way to go. Keep it up.

In the premises, the Plaintiff succeeds in this case. I enter Judgment for the Plaintiff and against the Defendants jointly and severally for: -

(a) A Declaration be and is hereby issued that the Plaintiff is the legal and lawful beneficiary of land parcel Number NYANDARUA/OL KALOU SALIENT/342 measuring 3.8

Hectares.

(b) A Declaration be and is hereby issued that the allocation of Title Number NYANDARUA/OL KALOU SALIENT/342 by the 1st Defendant to the 2nd Defendant on1/4/1998 was perpetrated unprocedurally and through fraud and the same is hereby cancelled forthwith and substituted therefor with the name of MUNYUA WAINAINA NG'ANG'A, the current Administrator of the of Wangari Mwangi (Deceased)

but to hold as the legal representative of the said Estate.

(c) Costs of this Suit.

Judgment dated, signed and delivered at Nyandarua this 12th Day of February 2026.

MUGO KAMAU

JUDGE

<u>In the presence of</u>: -

Court Assistant – Samson.

Ms. Muigai for the Plaintiff.

Mr. Opar for the Defendant.