

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT ELDORET**  
**ELC LAND CASE NO. E030 OF 2024**

**HON. FRANCIS KIPKOECH LAGAT** .....  
**PLAINTIFF**

**-VERSUS-**

**TONUI CHERUIYOT** .....  
**DEFENDANT**

**JUDGMENT:**

1. The Plaintiff filed the present suit vide a Plaint dated on 9<sup>th</sup> May, 2024, against the Defendant, seeking the following ORDERS;
  - a) **An order of Permanent Injunction restraining the Defendant whether by himself, his agents, servants and/or whomsoever acting for him, from entering, remaining in and/or interfering with the quiet possession of the Plaintiff's parcel of land known as ELDORET MUNICIPALITY BLOCK 10/1298 measuring approx. 0.34 Ha.**
  - b) **An order of declaration, declaring that the Plaintiff is the absolute owner of the whole of that parcel of land known as ELDORET MUNICIPALITY BLOCK 10/1298.**
  - c) **An order do issue directing the Land Registrar Uasin Gishu County to cancel the Certificate of Lease issued to the Defendant as the proprietor of**

**that parcel of land known as ELDORET MUNICIPALITY BLOCK 10/1298.**

**d) An order of eviction and demolition of structures.**

**e) The plaintiff seek for general damages.**

**f) The plaintiff further seeks for exemplary damages.**

**g) Costs and interest of the suit.**

**h) Any other further relief this honourable court deems fit and just to grant.**

**Plaintiff's Case;**

2. The plaintiff avers that he is the owner of the whole of that parcel of land known as ELDORET MUNICIPALITY BLOCK 10/1298 (**hereinafter referred to as the suit land**) measuring approx. 0.34Ha; having been allotted the same on the 09.06.1993 vide an Allotment letter Ref No. 31710/XXIX referred as UNS COMMERCIAL PLOT - ELDORET MUNICIPALITY.
3. It is his contention that he complied with all the terms of the said letter of allotment by accepting it and paying the requisite fees as per the allotment letter dated 09.06.1993.
4. He further avers that as at 17.08.2000, the RIM had already been amended and the suit land prior referred to as UNS COMMERCIAL PLOT - ELDORET MUNICIPALITY had been given a new parcel number **ELDORET MUNICIPALITY BLOCK 10/1298**, having paid a sum of Kshs. 32,310/= through receipt No. 9210400 Ref. No. CT/74/VO/87/34.

5. It is therefore his claim that he was shocked to learn that the defendant had been granted lease under CF No. 323369 by the Commissioner of Lands with respect to the suit land belonging to him and at any time the Land Registrar- Uasin Gishu would proceed to issue him with certificate of lease and thus dispossess him of his land.
6. It is further his claim that he has never been given any notice revoking his letter of allotment by the Government of Kenya or by the Commissioner of Lands.
7. He thus avers that having been allotted the suit land, the same was never available for allocation since it had already been alienated.
8. He stated that he has been in possession of the suit land since he was allotted the same and has never offered it for sale or sold it to the defendant, save to one Thomas Kiprotich Talam on 01.01.2021, which sale was frustrated.
9. He thus contends that the defendant does not have any color of right over the suit land and therefore the issuance of the lease to the defendant is illegal, unlawful, null and void and does not confer any proprietary interest over the suit land to him.
10. He outlined the particulars of illegality and unlawfulness on the part of the defendant and maintained that the issuance of the lease was fraudulent and illegal.

11. The plaintiff also outlined the particulars of fraud; that his letter of allotment has never been revoked, that the defendant's registration was procured through misrepresentation and that the lease in respect to the suit land had been acquired unprocedurally.
12. In conclusion, he urged the court to allow his claim against the defendant and to grant the orders as sought in the plaint.

**Defendant's Case;**

13. Vide an order issued on 19.11.2024 by Hon. Obaga -J. the plaintiff was allowed to effect service upon the defendant by way of substituted service by advertising in a daily newspaper with nationwide circulation.
14. Consequently, the defendant was served through an advertisement in the Daily Nation Newspaper on 17.02.2025 and an affidavit of service dated 19.02.2025 duly filed to that effect.
15. Despite being duly informed of the existence of the suit and duly served, the defendant neither entered appearance nor filed a defence in response to the plaintiff's claim.
16. The plaintiff's case thus proceeded ex-parte and his case is thus deemed uncontroverted.

**Trial:**

17. The Plaintiff's case proceeded for formal proof hearing on 29.10.2025. The plaintiff testified as PW1. He informed the court that he lives in Koitoror Uasin Gishu county and is a farmer by occupation.
18. He adopted his witness statement dated 09.05.2024 as his evidence in chief.
19. He also produced the documents in his list of documents dated 09.05.2025 as Pexhibits 1 - 12 respectively in further support of his case as follows: -
  - Pexh. 1 - Letter of Allotment dated 09/06/1993
  - Pexh. 2 - Registration RIM dated 17/8/2020
  - Pexh. 3 - letter dated 15/10/2015
  - Pexh. 4 - letter dated 03/03/2016
  - Pexh. 5 - letter dated 18/03/2016
  - Pexh. 6 - letter dated 23/3/2016
  - Pexh. 7 - letter dated 21/10/2016
  - Pexh. 8 - Lease CF No. 323369
  - Pexh. 9 - letter dated 08/04/2021
  - Pexh. 10 - letter dated 17/11/2021
  - Pexh. 11 - Map
  - Pexh. 12 - Sale Agreement dated 01/01/2021
20. In conclusion, he urged the court to allow his claim and grant him the prayers sought in the plaint.
21. The plaintiff thereafter closed his case.
22. Upon close of the plaintiff's case, this court issued directions on the filing of final submissions.

23. The plaintiff filed his submissions dated 09.12.2025 together with authorities, which I have read and duly considered. Since the matter proceeded by way of formal proof, there were no submissions by the defendant.

**Analysis and Determination:**

24. I have carefully considered the plaint, the evidence adduced, the respective exhibits adduced by the plaintiff and his submissions in totality and it is my considered view that the following issues arise for determination: -
- a. *Who is the bonafide, actual and lawful or legal owner of the suit land.*
  - b. *Whether the plaintiff is entitled to the reliefs sought in the plaint.*
  - c. *Who should bear the costs of the suit.*

**Who is the bonafide, actual and lawful or legal owner of the suit land;**

25. The plaintiff has urged this court to make a declaration that he is the bonafide, actual and lawful owner of the suit land herein known as ELDORET MUNICIPALITY BLOCK 10/1298 measuring approx. 0.34Ha (***hereinafter referred to as the suit land***)
26. It is his claim he was allotted the suit land sometimes on the 09.06.1993 vide an Allotment letter Ref No. 31710/XXIX. That pursuant to the said letter of allotment offer, he duly accepted the same and complied with all the terms as outlined in the said letter.

27. He therefore contends that having been allotted the same, the suit land was not available for alienation and/or allocation to the defendant or anyone else. He thus dismissed the allocation, registration and the certificate of lease issued to the defendant as being done illegally, unlawfully, null and void and which cannot confer any proprietary interest to the defendant.
28. It is further his claim that he has never been issued with any notice revoking his letter of allotment and he is therefore still the lawful allottee thereto.
29. To support his ownership claims, the plaintiff who testified as PW1, produced a copy of the letter of allotment dated 09.06.1993, RIM dated 17.08.2020 and copy of the Map as Pexhibits 1, 2 and 11 respectively, which exhibits remained uncontroverted.
30. From the foregoing, it is evident that the plaintiff has predicated his ownership claim on the Allotment Letter dated 09.06.1993 (pexh. 1). He maintained that he duly complied with the conditions outlined in the said letter of allotment and consequently, he is the lawful owner of the suit land herein, and the same was therefore not available for alienation to the defendant.
31. In determining this issue, this court is called upon to consider the place and importance of a letter of allotment and whether it conferred proprietary rights and interests in favour of the plaintiff.

32. It is common ground that a letter of allotment per se and by itself and/or as a stand-alone document does not confer any title in favor of the named allottee thereof. The onus is on the plaintiff to sufficiently prove to the required standard that he fully complied with the terms and conditions outlined in the letter of allotment within the specified timelines therein.
33. The Supreme Court in the case of **Torino Enterprises Limited vs Attorney General (Petition 5 (E006) of 2022) [2023] KESC 79 (KLR)** (22 September 2023) (Judgment), held as follows: -

***“57.The Respondent also challenged the letter of allotment on grounds that at the time of its transfer, the conditional thirty (30) days acceptance period had lapsed. As it turned out, the letter was also silent on whose behalf the commissioner of lands had made the allotment. Noting that the Commissioner of Lands by an allotment letter dated December 19, 1999 purported to allocate the suit property to Renton Company Limited. Thereafter, by a letter dated April 25, 2001, Renton Company Limited sought approval from the Commissioner of Lands to transfer the same to the appellant. The appellant’s ownership is traced back to this allotment Letter even if subsequently registered under the***



**Registration of Titles Act cap 281 (Repealed) on April 26, 2001.**

**58. So, can an allotment letter pass good title? It is settled law that an allotment letter is incapable of conferring interest in land, being nothing more than an offer, awaiting the fulfilment of conditions stipulated therein. In *Dr Joseph NK Arap Ng'ok v Justice Moijo Ole Keiyua & 4 others* CA 60/1997 [unreported]; and in *Gladys Wanjiru Ngacha v Teresa Chepsaat & 4 others* HC Civil Case No 182 of 1992; [2008] eKLR, the superior courts restated this principle as follows: "It has been held severally that a letter of allotment per se is nothing but an invitation to treat. It does not constitute a contract between the offerer and the offeree and does not confer an interest in land at all "**

**59. The pronouncement in *Gladys Wanjiru* and *Dr Joseph NK Arap Ng'ok* (supra) has been echoed in various Environment and Land Court decisions post the 2010 Constitution, including; *Lilian Wanjeri Njatha v Sabina Wanjiru Kuguru & another*, Environment and Land Case No 471 of 2010; [2022] eKLR; *John Elias Kirimi v Martin Maina Nderitu & 4 others*, Environment and Land Suit No 320 of 2011; [2021] eKLR; and *Kadzoyo Chombo Mwero v Ahmed***

**Muhammed Osman & 11 others, Environment and Land Case No 42 of 2021; [2021] eKLR, to mention but a few.**

**60. Suffice it to say that an Allottee, in whose name the allotment letter is issued, must perfect the same by fulfilling the conditions therein. These conditions include but are not limited to, the payment of a stand premium and ground rent within prescribed timelines. But even after the perfection of an allotment letter through the fulfillment of the conditions stipulated therein, an allottee cannot pass valid title to a third party unless and until he acquires title to the land through registration under the applicable law. It is the act of registration that confers a transferable title to the registered proprietor, and not the possession of an allotment letter. In *Peter Wariire Kanyiri v Chrispus Washumbe & 2 others, Environment and Land Court Case No 603 of 2017; [2022] eKLR, Kemei, J* held as follows:- “In the case at hand, in the absence of any title registered in the name of the plaintiff, the court is unable to hold that the plaintiff is the registered proprietor of the land. This is because the letter of allotment lapsed**

***within 30 days and the same is of no legal consequences.....***

34. I have carefully considered the letter of allotment produced herein as Pexh. 1 and the conditions outlined therein, which required the payment of the Stand Premium of Kshs. 140,000/=, and Annual Rent of Kshs. 28,000/=. The other incidental payments made the total amount payable to be Kshs. 165,820/=.
35. Clause No. 2 therein states that an acceptance should be sent to the Department of Lands together with the cheque for the amount of Kshs. 165,820/=.
36. It is further stipulated that if the acceptance and payment respectively are not received within 30 days from the date thereof the offer therein contained would be considered to have lapsed.
37. The question that therefore follows is whether the plaintiff sufficiently proved that he duly complied with the conditions outlined in the letter of offer within the 30 days period outlined therein.
38. From a look at the plaintiff's exhibits adduced in support of his case, there is no proof of payment of the Kshs. 165,820/= within the said 30 days period, either in the form of a copy of the cheque or an official receipt from the department of lands signifying receipt of the said amounts.

This court cannot therefore certainly conclude that the plaintiff complied with the conditions stipulated in the letter of allotment.

39. Guided by the Supreme Court decision above, it is my considered opinion that the failure by the plaintiff to sufficiently prove the compliance with the terms and conditions outlined in Pexh. 1, the said letter of offer lapsed upon the expiry of 30 days from the date of 09.06.1993.
40. In essence therefore, the letter of allotment dated 09.06.1993, cannot confer any proprietary interest in respect to the suit land in favor of the plaintiff. The same having lapsed, has no legal consequence/effect.
41. In view of the foregoing, this court is unable to conclude and find that the plaintiff is the actual, bonafide or lawful owner of the suit land herein. The plaintiff has failed to satisfactorily prove his ownership claims to the required standard.

**Whether the plaintiff is entitled to the reliefs sought in the plaint;**

42. In addition to the declaratory orders sought by the plaintiff, he also sought orders of permanent injunction, cancellation of the certificate of lease issued in favor of the defendant,

eviction and demolition of structures, general damages, exemplary damages as well as costs of the suit.

43. In view of the finding in issue (i) above, that the plaintiff has failed to establish, demonstrate and sufficiently prove his ownership claims, it is my considered view that he is not entitled to the reliefs sought in the plaint.

**Who should bear the costs of the suit;**

44. The general rule is that a successful party should be awarded costs of the suit unless the court, for good reason, directs otherwise.
45. In this case, even though it is my finding that the Plaintiff has failed to prove his case against the Defendant to the required threshold, the defendant failed to enter appearance or even file a statement of defence or participate in the proceedings herein. He is therefore not entitled to the costs of the suit.

**CONCLUSION:**

46. In conclusion, it is the finding of this court that the Plaintiff has failed to prove his claim against the defendant to the required standard. Consequently, the Plaint dated 9<sup>th</sup> May, 2024 is **not merited** and is hereby **dismissed** with no orders as to costs.

47. It is so ordered.

**DATED, SIGNED and DELIVERED at ELDORET on 12<sup>TH</sup> day  
of FEBRUARY, 2026.**

**HON. C.K. YANO  
JUDGE**

In the virtual presence of; -

Mr. Rotich holding brief for Mr. Mathai for Plaintiff.

No appearance for Defendant.

Court Assistant - Laban