



**Ogutu & Oduol t/a Airport Lakeside Resort v Ali & 3 others (Environment and Land Case Civil Suit E007 of 2022) [2026] KEELC 771 (KLR) (17 February 2026) (Judgment)**

Neutral citation: [2026] KEELC 771 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KISUMU  
ENVIRONMENT AND LAND CASE CIVIL SUIT E007 OF 2022  
SO OKONG'O, J  
FEBRUARY 17, 2026**

**BETWEEN**

**WALTER OMINDE OGUTU & SELINA GRACE ODUOL T/A AIRPORT  
LAKESIDE RESORT ..... PLAINTIFF**

**AND**

**AHMED ADAM ALI ..... 1<sup>ST</sup> DEFENDANT  
LAND REGISTRAR KISUMU ..... 2<sup>ND</sup> DEFENDANT  
NATIONAL LAND COMMISSION ..... 3<sup>RD</sup> DEFENDANT  
ATTORNEY GENERAL ..... 4<sup>TH</sup> DEFENDANT**

**JUDGMENT**

1. The Plaintiffs brought this suit against the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants through a plaint dated 25<sup>th</sup> March 2022. The plaint was amended on 9<sup>th</sup> November 2022 to add the 4<sup>th</sup> Defendant to the suit. The Plaintiffs averred that they applied for and were allocated an unsurveyed parcel of land measuring approximately 2.70 Ha. and described in the letter of allotment Ref. No. 30973/LXVIII dated 7<sup>th</sup> January 1999 as Uns.hotel Site B-kisumu Municipality (hereinafter referred to as “the Plot”). The Plaintiffs averred that they accepted the allotment and complied with all the conditions in the letter of allotment by making a payment of Kshs. 108,800/- and were issued with a receipt No. 078320 on 22<sup>nd</sup> September 1999. The Plaintiffs averred that the said amount was paid on account of conveyance, rent, stand premium, stamp duty, approval and planning fees.
2. The Plaintiffs averred that they engaged a licensed land surveyor to survey the plot and process the lease documents for them. The Plaintiffs averred that the said surveyor surveyed the plot, issued a beacon certificate, and submitted the Plaintiffs’ documents for the preparation of the RIM (sic) and eventually the lease in favour of the Plaintiffs. The Plaintiffs averred that the 3<sup>rd</sup> Defendant’s predecessor, the Commissioner of Lands, assessed the land rent and other fees at Kshs. 146,500/-, which they paid



- through a banker's cheque No. 10546 on 13<sup>th</sup> June 2012. The Plaintiffs averred that after the said payment, they were told to wait for the lease and the lease certificate.
3. The Plaintiffs averred that they had been in possession of the plot since 1999 and had been following up on the lease in respect thereof since 2012. The Plaintiffs averred that through a letter dated 26<sup>th</sup> June 2019, the Chief Land Registrar informed the 2<sup>nd</sup> Defendant that the Plaintiffs' lease document was sent to the 2<sup>nd</sup> Defendant for registration on 6<sup>th</sup> June 2012. The Plaintiffs averred that they were shocked to learn from the 2<sup>nd</sup> Defendant through a letter dated 5<sup>th</sup> October 2020 that the plot had been registered as Title No. Kisumu/Municipality Block 2/129 (hereinafter referred to as "the suit property") in the name of the 1<sup>st</sup> Defendant, without any supporting documents. The Plaintiffs averred that they sought to know the 1<sup>st</sup> Defendant in vain, and their efforts to have the 2<sup>nd</sup> Defendant cancel the erroneous and fraudulent registration of the suit property in the name of the 1<sup>st</sup> Defendant had been frustrated by the 2<sup>nd</sup> Defendant. The Plaintiffs averred that the 1<sup>st</sup> Defendant was registered as the owner of the suit property through fraudulent collusion between the 1<sup>st</sup> and 2<sup>nd</sup> Defendants. The Plaintiffs pleaded several particulars of fraud against the 1<sup>st</sup> and 2<sup>nd</sup> Defendants.
  4. The Plaintiffs averred that the 3<sup>rd</sup> Defendant, as the head lessor(sic), had a statutory duty to supervise the actions of the 2<sup>nd</sup> Defendant concerning the registration of leases, which duty seemed to have been ignored and/or not adequately performed in respect of the registration of the lease for the suit property.
  5. The Plaintiffs sought judgment against the Defendants jointly and severally for;
    1. A declaration that the registration of the 1<sup>st</sup> Defendant as the proprietor of Title No. Kisumu Municipality/Block 2/129 (the suit property) was fraudulent, illegal, irregular, null and void.
    2. An order for the immediate cancellation of the 1<sup>st</sup> Defendant's title over the suit property.
    3. A mandatory injunction compelling the 3<sup>rd</sup> Defendant to issue and register a lease in favour of the Plaintiffs over Title No. Kisumu Municipality/Block 2/129 and to issue a lease certificate to the Plaintiffs.
    4. A permanent injunction restraining the 1<sup>st</sup> Defendant from trespassing on the Plaintiffs' land parcel, Title No. Kisumu Municipality/Block 2/129.
    5. Costs and interests at court rates.
  6. The 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants entered appearance and filed general defences denying the Plaintiffs' claim. The 1<sup>st</sup> Defendant did not enter an appearance and, as such, did not defend the suit. At the trial, one of the Plaintiffs, Walter Ominde Ogutu (PW1), adopted the contents of the amended plaint as his evidence in chief. He produced the documents attached to the Plaintiffs' list of documents filed on 29<sup>th</sup> March 2022, and the Plaintiffs' further list of documents filed on 13<sup>th</sup> December 2022 as P.EXH.1 and P.EXH. 2 respectively. PW1 stated that he wanted the court to assist them in getting back the suit property. He stated that when he did a search on the suit property, he found the property registered in the name of the 1<sup>st</sup> Defendant.
  7. On cross-examination by the advocate for the 2<sup>nd</sup> and 4<sup>th</sup> Defendants, PW1 stated that, according to the letter of allotment, they were required to pay Kshs. 71,210/- within 30 days. He stated that the receipt that he produced as an exhibit was for Kshs. 108,800/- because when he went to the land office to make the payment, that was the amount that he was told to pay. He stated that he was not sure whether that payment was for two parcels of land. On re-examination, PW1 stated that he could not recall whether he was issued with a lease and a certificate of lease.



### **The submissions**

7. The 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants did not give evidence at the trial. After the close of evidence, the Plaintiffs' and the 2<sup>nd</sup> and 4<sup>th</sup> Defendants' advocates adopted the submissions they had filed earlier in the matter in the proceedings, which were set aside.

### **The Plaintiffs' submissions**

8. The Plaintiffs had filed submissions dated 15<sup>th</sup> February 2024. The Plaintiffs submitted that the 3<sup>rd</sup> Defendant did not participate in the proceedings apart from filing a statement of defence. The Plaintiffs submitted that the issuance of a lease and a certificate of lease in respect of the suit property to the 1<sup>st</sup> Defendant was fraudulent. The Plaintiffs submitted that the letter dated 26<sup>th</sup> June 2019 from the Chief Land Registrar to the 2<sup>nd</sup> Defendant confirmed that the lease for the suit property had been issued in favour of the Plaintiffs. The Plaintiffs submitted that their claim over the suit property was supported by a letter of allotment. The Plaintiffs submitted that the suit property was registered in the name of the 1<sup>st</sup> Defendant without any supporting document. The Plaintiffs submitted that in his letter dated 26<sup>th</sup> June 2019, the Chief Land Registrar admitted that the suit property belonged to the Plaintiffs and that there were no documents in support of the registration of the suit property in the name of the 1<sup>st</sup> Defendant. The Plaintiffs submitted that in the absence of evidence of how the 1<sup>st</sup> Defendant was registered as the owner of the suit property, the court must find that the said registration was unlawful, fraudulent, null and void. The Plaintiffs submitted that they had satisfied all the conditions set out in their letter of allotment. The Plaintiffs urged the court to find that they had proved their case against the Defendants and proceed to enter judgment in their favour as prayed in the amended plaint.

### **The 2<sup>nd</sup> and 4<sup>th</sup> Defendants' submissions**

9. The 2<sup>nd</sup> and 4<sup>th</sup> Defendants had filed submissions dated 12<sup>th</sup> October 2023. The 2<sup>nd</sup> and 4<sup>th</sup> Defendants submitted that the main issue for determination in the suit was whether the Plaintiffs were the owners of the suit property. The 2<sup>nd</sup> and 4<sup>th</sup> Defendants submitted that under Section 107 of the [Evidence Act](#), the burden was on the Plaintiffs to prove their title to the suit property. The 2<sup>nd</sup> and 4<sup>th</sup> Defendants submitted that the Plaintiffs paid the allotment fees after the expiry of the 30 days within which the payment was to be made. The 2<sup>nd</sup> and 4<sup>th</sup> Defendants submitted that the payment was made after the offer of the suit property to the Plaintiffs had lapsed. The 2<sup>nd</sup> and 4<sup>th</sup> Defendants submitted further that in the receipt dated 22<sup>nd</sup> September 1999 presented in evidence by the Plaintiffs, the Plaintiffs claimed to have paid Ksh.108, 800/- which was significantly different from the amount indicated in the allotment letter of Ksh.71,010/-. The 2<sup>nd</sup> and 4<sup>th</sup> Defendants submitted further that even if the fees and other charges payable in respect of Title No. Kisumu/Municipality/Block 2/130, were taken into account, the total amount that was payable by the Plaintiffs in this suit, and Milimani Resort Limited, which was allocated, Title No. Kisumu/Municipality/Block 2/130, the subject of ELC No. E006 of 2022 would have come to Kshs. 94,420/= and not Ksh.108, 800/=. The 2<sup>nd</sup> and 4<sup>th</sup> Defendants submitted further that the 1999 Part Development Plan presented in evidence by the Plaintiffs showed that Plots marked C and D were the ones reserved for hotels, yet the Plaintiffs' letter of allotment and beacon certificate presented in evidence referred to Plot B in the said Part Development Plan as the Hotel site that was allocated to the Plaintiffs. The 2<sup>nd</sup> and 4<sup>th</sup> Defendants submitted that the Plaintiffs had not established that they were the lawful owners of the suit property, as the evidence presented to the court did not support that conclusion.



## Analysis and determination

10. I have considered the pleadings, the evidence adduced by the Plaintiffs, and the parties' submissions. I am of the view that the main issues for determination in this suit are whether the Plaintiffs are the lawful owners of the suit property, and whether the property was registered in the name of the 1<sup>st</sup> Defendant illegally and fraudulently. The other issue is whether the Plaintiffs are entitled to the reliefs sought in their amended plaint. As I have mentioned earlier, the 1<sup>st</sup> Defendant did not defend the suit. The evidence tendered in court by the Plaintiffs regarding the preparation of the Part Development Plan (PDP) for the suit property, allotment of the suit property to the Plaintiffs on 7<sup>th</sup> January 1999, the payments they made for the allotment, the survey of the property and the correspondence they entered into with the 2<sup>nd</sup> Defendant and the Chief Land Registrar over the title for the suit property were not rebutted by the 1<sup>st</sup> Defendant who holds a title over the suit property and the other Defendants who defended the suit. The Plaintiffs produced in evidence a letter dated 26<sup>th</sup> June 2019 from the Chief Land Registrar confirming that the suit property was to be registered in the Plaintiffs' names. The Plaintiffs having proved that the suit property was allocated to them, they accepted the allotment, paid the requisite fees, surveyed the property, and had a parcel number given to it; the burden shifted to the 1<sup>st</sup> Defendant to prove that he had a better title to the suit property than the Plaintiffs. The 1<sup>st</sup> Defendant's registration as the owner of the suit property without more is not sufficient evidence of superior title.
11. In Nairobi High Court Civil Suit No. 1024 of 2005(O.S), Milankumar Shah & 2 others v. The City Council of Nairobi & another, the court stated as follows:

“We hold that the registration of title to land is absolute and indefeasible to the extent firstly that the creation of such title was in accord with the applicable law and secondly where it is demonstrated to a degree higher than the balance of probability that such registration was not procured through fraud and misrepresentation to which the person or body which claims and relies on that principle has not himself or itself been part of a cartel which schemed to disregard the applicable law, and the public interest”.
12. In Hubert L. Martin & 2 Others v. Margaret J. Kamar & 5 Others[2016] eKLR, the court stated as follows:

“A court when faced with a case of two or more titles over the same land has to make an investigation so that it can be discovered which of the two titles should be upheld. This investigation must start at the root of the title and follow all processes and procedures that brought forth the two titles at hand. It follows that the title that is to be upheld is that which conformed to procedure and can properly trace its root without a break in the chain... Every party must show that their title has a good foundation and passed properly to the current title holder. With the nature of case at hand, I will need to embark on investigating the chain of processes that gave rise to the two titles in issue as it is the only way I can determine which of the two titles should be upheld.”
13. In Adan Abdirahani Hassan & 2 others v Registrar of Tiles & 2 others [2013] eKLR, the court stated as follows:

“20. Article 40 of the current Constitution, just like section 75 of the repealed Constitution protects the right to own property. This Article should however be read together with the provisions of Article 40(6) which excludes the



protection of property which has been found to have been unlawfully acquired. This requirement recognises the fact that *the Constitution* protects certain values such as human rights, social justice and integrity amongst others. These national values require that before one can be protected by *the Constitution*, he must show that he has followed the due process in acquiring that which he wants to be protected.”

14. In *Munyu Maina v. Hiram Gathiha Maina*, Civil Appeal No.239 of 2009, [2013]eKLR, the Court of Appeal stated as follows:

“We state that when a registered proprietor’s root of title is under challenge, it is not sufficient to dangle the instrument of title as proof of ownership. It is this instrument of title that is in challenge and the registered proprietor must go beyond the instrument and prove the legality of how he acquired the title and show that the acquisition was legal, formal and free from any encumbrances including any and all interests which need not be noted on the register.”

15. There is no evidence before the court on how the 1<sup>st</sup> Defendant acquired the suit property. Even the 2<sup>nd</sup> and 4<sup>th</sup> Defendants, who defended the Plaintiffs’ claim and who are the custodians of the land records at the Kisumu Land Registry, did not tell the court how the 1<sup>st</sup> Defendant came to be registered as the owner of the suit property. I find no merit in the arguments put forward by the 2<sup>nd</sup> and 4<sup>th</sup> Defendants in their submissions. The issues raised by the 2<sup>nd</sup> and 4<sup>th</sup> Defendants are based on fact but are unsupported by evidence. The court has noted that the Plaintiffs paid for two properties at the same time, and that some of the items paid for were not in the letter of allotment. I can see no irregularity or illegality in the Plaintiffs having paid more than what was set out in the letter of allotment. PW1 produced in evidence a letter dated 26<sup>th</sup> June 2019 from the Chief Land Registrar to the 2<sup>nd</sup> Defendant in which the Chief Land Registrar stated that the suit property was supposed to be registered in the name of the Plaintiffs. Since the 1<sup>st</sup> Defendant did not defend the suit, there is no evidence before the court of how the 1<sup>st</sup> Defendant came to be registered on 8<sup>th</sup> October 2013 as the owner of the suit property, which was allocated to the Plaintiffs on 7<sup>th</sup> January 1999. Even the 2<sup>nd</sup> Defendant, who defended the suit, did not place before the court any document from the Kisumu Land Registry to support the registration of the suit property in the name of the 1<sup>st</sup> Defendant. I am satisfied from the evidence on record that the Plaintiffs are the lawful beneficial owners of the suit property and that the 1<sup>st</sup> Defendant acquired the property unlawfully and fraudulently. The suit property having been allocated to the Plaintiffs and the Plaintiffs having accepted the allocation and paid the required fees, the property was not available for allocation to the 1<sup>st</sup> Defendant. In *Rukiya Ali Mohamed v. David Gikonyo Nambacha & another*, Kisumu HCCC No. 9 of 2004, the court stated as follows:

“.... once allotment letter is issued and the allottee meets the conditions therein, the land in question is no longer available for allotment since a letter of allotment confers absolute right of ownership or proprietorship unless it is challenged by the allotting authority or is acquired through fraud, mistake or misrepresentation or that the allotment was out rightly illegal or it was against public interest. In other words, where land has been allocated, the same land cannot be reallocated unless the first allocation is validly and lawfully cancelled.”

16. I am satisfied that the Plaintiffs have proved their case against the Defendants on a balance of probabilities and are entitled to the reliefs sought in their amended plaint.



## **Conclusion**

17. In conclusion, I hereby enter judgment for the Plaintiffs against the Defendants jointly and severally for;
1. A declaration that the registration of the 1<sup>st</sup> Defendant as the proprietor of the land parcel, Title No. Kisumu Municipality/Block 2/129 was fraudulent, illegal, and irregular, and as such, null and void.
  2. An order for cancellation forthwith of the 1<sup>st</sup> Defendant's title over the land parcel, Title No. Kisumu Municipality/Block 2/129.
  3. A mandatory injunction compelling the 3<sup>rd</sup> Defendant to issue a lease in favour of the Plaintiffs in respect of the land parcel, Title No. Kisumu Municipality/Block 2/129, in accordance with the letter of allotment dated 7<sup>th</sup> January 1999, subject to the Plaintiffs paying any necessary fees or charges.
  4. A mandatory injunction compelling the 2<sup>nd</sup> Defendant to register the lease in favour of the Plaintiffs over the land parcel, Title No. Kisumu Municipality/Block 2/129 and issue the Plaintiffs with a certificate of lease once the lease has been issued by the 3<sup>rd</sup> Defendant, subject to the Plaintiffs paying any necessary fees or charges.
  5. A permanent injunction restraining the 1<sup>st</sup> Defendant from trespassing on the land parcel, Title No. Kisumu Municipality/Block 2/129.
  6. Costs of the suit.

Written and signed at Kisumu by

**S. OKONG'O**

**JUDGE**

**DELIVERED, DATED AND COUNTERSIGNED AT KISUMU ON THIS 17<sup>TH</sup> DAY OF FEBRUARY 2026.**

**E. ASATI**

**JUDGE**

Judgment delivered virtually through Microsoft Teams Video Platform in the presence of:

for the Plaintiff

for the 2<sup>nd</sup> and 4<sup>th</sup> Defendants

for 3<sup>rd</sup> Defendant

-Court Assistant

