

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**  
**AT ELDORET**  
**ELC CASE No. E091 OF 2020**

**PROF JOSPHAT YEGO ..... PLAINTIFF**

**-VERSUS-**

**JOSEPH KIPKOECH ..... DEFENDANT**

**J U D G E M E N T**

1. The Plaintiff through a Plaint dated 22.10.2022 (hereinafter referred to as **“the present suit”**) did seek for the following Orders against the Defendant herein; -

**(a) A Declaratory Order holding that the suit land parcel ELDORET MUNICIPALITY BLOCK 10/140 belongs to the Plaintiff.**

**(b) An Order holding that the Defendant’s Letter of Allotment dated 18.10.1989, the Lease for Land Reference Number ELDORET MUNICIPALITY BLOCK 10/140 dated 18.02.2000 and the Certificate of Lease for Land Parcel ELDORET MUNICIPALITY BLOCK 10/140 issued on 10.03.2000 were fraudulently obtained, therefore illegal.**

**(c) An order for revocation of the Defendant’s Lease dated 18.02.2000 for Land Reference ELDORET MUNICIPALITY BLOCK 10/140 and the resultant Certificate of Lease dated 10.03.2000.**

**(d) An Order of Permanent Injunction restraining the Defendant and or his agents from interfering with the Plaintiff’s right to Land Reference Number ELDORET MUNICIPALITY BLOCK 10/140.**

**(e) Damages.**

**(f) Costs and interest.**

2. The facts pleaded in the Plaint in support of the above prayers can be summarized as follows;-
- (i) The Plaintiff is the legitimate and lawfully registered owner of Land Reference Number ELDORET MUNICIPALITY BLOCK 10/140 (hereinafter referred to as **“the suit property”**).
  - (ii) The Plaintiff did plead that upon registration of his ownership over the suit property, the Defendant herein did interfere with his quite possession and occupation of the same by pulling down the Plaintiff’s fence on diverse dates between 23.09.2020 and 03.10.2020.
  - (iii) Since the Defendant’s unlawfully acts of pulling down the Plaintiff’s fence, there has been numerous threats on his occupation and use of the suit property.
  - (iv) The Plaintiff did plead that he is the legitimate and lawfully registered owner of the suit property based on a Letter of Allotment dated 18.10.1990, a Lease Agreement dated 28.10.2019 and a Certificate of Lease dated 09.12.2019.
  - (v) Similarly, the Plaintiff did acknowledge that the Defendant herein was in possession of another Certificate of Lease dated 10.03.2000 over same the suit property.
  - (vi) According to the Plaintiff, the Defendant’s Certificate of Lease dated 10.03.2000 was invalid and illegal as it had been obtained through fraud.
  - (vii) The Particulars of Fraud that the Plaintiff did plead against the Defendant were as follows; -
    - a. The Defendants purported Letter of Allotment dated 18.10.1989 for a portion of land measuring 0.59 of a Hectare was fraudulent.

- b. If in the event the Letter of Allotment dated 18.10.1989 existed, then the Defendant failed to comply with the terms and conditions thereof.
  - c. Consequently, the purported Lease Agreement registered on the 10.03.2000 in the name of the Defendant was unlawful, null and void.
  - d. In essence thereof, the Certificate of Lease dated 10.03.2000 in the name of the Defendant over the suit property was unlawful, null and void.
3. The present suit was duly served on the Defendant who did oppose the same through a Statement of Defence dated 24.10.2023.
4. The Statement of Defence dated 24.10.2023 contained the followings facts in opposition of the present suit; -
- (i) The Defendant did also claim to be legitimate and lawful owner of the suit property herein.
  - (ii) According to the Defendant, all the allocation and registration documents recognizing him as the registered owner of the suit property were legitimate and regularly acquired from the relevant offices.
  - (iii) The Defendant did confirm to be bona fide and registered owner of the suit property having legitimately and regularly acquired the title documents.
  - (iv) Consequently, the Defendant did deny the allegation by the Plaintiff that his ownership documents and in particular the Lease Agreement and Certificate of Lease were obtained and/or acquired through fraud.
  - (v) The Defendant claimed that he has been in occupation of the suit property and the Plaintiff has been attempting to disrupt his occupation using unorthodox means with help of elements from the County Government of Uasin Gishu.

- (vi) The Defendant averred that since he is the registered owner, the Plaintiff does not deserve the Orders he seeks.
- (vii) The Defendant challenged the Orders of revocation of his Lease sought by the Plaintiff and averred that it is the document held by the Plaintiff that should be cancelled.
5. In addition to the Statement of Defence dated 24.10.2023, the Defendant did file a Counter-Claim against the Plaintiff seeking the following Orders; -
- (a) Declaration that the Defendant is the bonafide owner of Land Parcel Number ELDORET MUNICIPALITY BLOCK 10/140 and therefore, the ownership documents held by the Plaintiff over the same property should be cancelled thereof.**
- (b) An order of Permanent Injunction restraining the Plaintiff, his employees, servants and/or agents from interfering with the Defendant's ownership occupation and use of Land Reference Number ELDORET MUNICIPALITY BLOCK 10/140.**
- (c) Costs of the suit and interest.**
- (d) Any other relief that this Honourable Court may deem fit to grant.**
6. The facts in support of the Prayers above can be summarized as follows; -
- (i) The Defendant herein was the lawful and bonafide owner of the suit property since the year 2000.
- (ii) On or about 20.01.2020, the Plaintiff herein did present himself as the lawful and legitimate owner of the suit property and using officials of the County Government of Uasin Gishu did destroy the Defendant's property on the suit property.

- (iii) Due to the interference of the suit property by the Plaintiff through the County Government of Uasin Gishu, the Defendant did file a proceeding known as ELDORET ENVIRONMENT & LAND COURT CASE NO. 2 OF 2020.
  - (iv) Based on the proceeding known as ELDORET ENVIRONMENT & LAND COURT CASE NO. 2 OF 2020, the Court did issue an Order against the officials of the County Government of Uasin Gishu prohibiting any further interference and/or trespass onto the Defendant's property.
  - (v) Dispute the Prohibition Orders issued in the proceeding known as ELDORET ENVIRONMENT & LAND COURT CASE NO. 2 OF 2020, the Plaintiff continues to harass and threaten to evict the Defendant from the suit property.
  - (vi) The Defendant sought this Court to declare the Plaintiff's ownership documents as forged and therefore a Permanent Injunction should be issued restraining the Plaintiff from further interfering with the quiet occupation and use of the suit property by the Defendant.
7. Upon service of the Statement of Defence and the Counter-Claim dated 24.10.2023, the Plaintiff did file a Reply to Defence and Defence to Counter-Claim.
8. In the Plaintiff's Amended Reply to Defence and Defence to Counter-claim dated 09.06.2023, the following facts were pleaded;-
- (i) The Plaintiff did reiterate the fact that he was the lawful and legitimate owner of the suit property.
  - (ii) Consequently, the ownership documents registered in the name of the Defendant were fraudulent and therefore could not give any lawful ownership rights.
  - (iii) The Plaintiff did further state that the proceeding known as ELDORET ENVIRONMENT & LAND COURT CASE NO. 2

OF 2020 was between the County Government of Uasin Gishu and the Defendant hence had nothing to do with the Plaintiff herein.

(iv) According to the Plaintiff, the possession and use of the suit property was with him and it was the Defendant who was interfering with the same.

(v) In essence, the Plaintiff sought the Statement of Defence and the Counter-Claim thereof to be dismissed and Judgement entered in his favour in accordance to the suit before the Court.

9. After the Plaintiff filing the Reply to Defence and Defence to Counter-Claim, the pleadings did close and the matter listed for hearing.

### **PLAINTIFF'S TESTIMONIES & DOCUMENTARY EVIDENCE**

10. The first witness to testify was the Plaintiff herein who was marked as PW 1.

11. The Plaintiff did introduce himself as a retired Professor who currently resides in Kapsaret.

12. The Plaintiff did confirm to the Court that he had written a witness statement dated 22.10.2020 which he sought to adopt as his evidence in chief.

13. According to the Plaintiff, he had an application to the Commissioner of Lands (as then he was) seeking to be allocated a portion of land within Eldoret Municipality for industrial purposes.

14. Based on the Application For Allocation made by the Plaintiff herein, the Commissioner of Lands did allocate and issue the Letter of Allotment dated 18.10.1990 to the Plaintiff for a portion of land measuring 0.84 Ha based on the various terms and conditions prescribed therein including payment of KShs.131,080/-.

15. The Plaintiff did accept the Letter of Allotment dated 18.10.1990 and made the payment of KShs.131,080/- on the 07.11.1990 which was duly received and receipted.
16. The portion of land contained on in the Letter of Allotment dated 18.10.1990 was subsequently discovered to be only 0.59 of a Hectare and not 0.84 of a Hectare as indicated in the same.
17. Due to this disparity in the size of the suit property on the Letter of Allotment dated 18.10.1990, the Plaintiff was issued with a rectified Letter of Allotment dated 17.10.1994.
18. Thereafter, the Plaintiff was issued with a Lease Agreement dated 28.10.2019 through a Letter from the District Land Registrar dated 28.10.2019 for execution and return.
19. The Lease Agreement issued on 28.10.2019 was duly executed by the Plaintiff and the Certificate of Lease was registered on the 09.12.2019.
20. The Plaintiff did state that he had been in occupation and use of the suit property since the year 1994 and had been paying rent and rates between the years 1994 and 2020.
21. According to the Plaintiff, he had obtained a building permit on the 15.07.2020 for the construction of Perimeter Wall and a guard house.
22. However, for no justifiable reason, the Defendant herein did interfere with the quiet and peaceful occupation of the suit property on the allegation that he was the lawful registered owner of the suit property.
23. The Plaintiff did disclose that the Defendant herein had made some structures on the suit property which were subsequently removed by the County Government of Uasin Gishu.

24. The Plaintiff in support of the facts above did produce the following documents; -

**PW1 Exhibit 1 - Certified copy of the letter of allotment dated 18/10/1990.**

**PW1 Exhibit 2 - Certified copy of the receipt issued 7/11/1990 for a sum of KShs.131.080/-**

**PW1 Exhibit 3 - Certified copy of the FR No. 763/64, 214/50.**

**PW1 Exhibit 4 - Copy of a letter of allotment dated 17/10/1994.**

**PW1 Exhibit 5 - Copy of the Lease issued to the Plaintiff dated 28/10/2019 and registered on 9/12/2019.**

**PW1 Exhibit 6 - Copy of the letter dated 29/10/2019 from the Chief Land Registrar to District Land Registrar.**

**PW1 Exhibit 7 - Copy of Certificate of Lease issued on 9/12/2019 in favour of the Plaintiff.**

**PW1 Exhibit 8 - Copy of a demand notice for rent dated 29/12/2003.**

**PW1 Exhibit 9 - Copy of Rates payment receipt dated 27/01/2020 from the County to the Plaintiff.**

**PW1 Exhibit 10 (a) & (b) - Copies of application for development by the Plaintiff to the County dated 16/06/2020 and 6/07/2020.**

**PW1 Exhibit 11 - A copy of the development permit dated 15/07/2020 in favour of the Plaintiff.**

25. The Plaintiff therefore did state that the documents produced hereinabove were the legitimate and lawful ownership documents relating to the suit property and are not forged as alleged by the Defendant.
26. As such, the suit property was legitimately and legally registered in the name of the Plaintiff.
27. On the other hand, the Defendants documents of ownership were fraudulent hence did not have any ownership rights and should be revoked and cancelled forthwith.
28. In concluding the evidence in chief, the Plaintiff did seek this Court to allow the prayers sought in the present suit and dismiss the Counter-Claim filed by the Defendant.
29. On cross-examination, the Plaintiff did acknowledge that the suit property had two separate ownership documents with one in his name and the other in the name of the Defendant.
30. The Plaintiff did point out that the two Letters of Allotment of the suit property are dated 18.10.1990 and 17.10.1994 under the Reference No. 127695/5 and 127695 respectively.
31. The Plaintiff was referred to the Defendant's List of Documents dated 19.06.2023 and in Particular Item No. 1 which was a Letter of Allotment dated 18.10.1989 under Reference 127695/2 which was in the name of the Defendant.
32. The Plaintiff's comment on the Letter of Allotment dated 18.10.1989 in the name of the Defendant was that it was forged.
33. The Plaintiff did inform the Court that between the years 1999 and 2015, he was out of the Country and had left his brother JOSEPH LAGAT as the person in charge of the suit property.
34. On being referred to PW1 Exhibit 8, the Plaintiff did reiterate that he had paid the full amount requested in the Letter of

- Allotment as well as any rates demanded although he did not have the receipts for the rates payments.
35. The Plaintiff did state that upon his return to the Country, he discovered that there was an encroachment.
  36. The Plaintiff then did make a complaint to the County Government of Uasin Gishu about the illegal structures on the suit property and the same were thereafter demolished.
  37. The Plaintiff further did inform the Court that he had procured a Development Permit from the County Government of Uasin Gishu as the lawful owner of the suit property on the 06.07.2020 which had been produced as PW1 Exhibit 10 (b).
  38. According to the Plaintiff, the Defendant's Letter of Allotment dated 18.10.1989 was fake and/or fraudulent.
  39. On re-examination, the Plaintiff did inform the Court that he discovered the suit property had been invaded on or about July 2020 resulting to the filing of the present suit in October 2020.
  40. The Plaintiff did confirm to the Court that the Particulars of Fraud perpetuated by the Defendant had been specifically pleaded in the present suit.
  41. At the end of this re-examination, the Plaintiff was discharged from the witness box and his case was closed thereafter.

### **DEFENCE TESTIMONIES & DOCUMENTARY EVIDENCE**

42. The Defendant herein was called as the first Defence witness and was marked as DW 1.
43. The Defendant did introduce himself as a resident of Uasin Gishu and a farmer by occupation.
44. The Defendant did confirm to the Court that he had prepared a witness statement 19.06.2023 of which was adopted as his evidence in chief.

45. In support of the evidence contained in his witness statement dated 19.06.2023, the Defendant did produce the following documents in support of his testimony; -

**DW1 Exhibit 1 - Copy of a Letter of Allotment dated 18.10.1989 in favour of the Defendant.**

**DW1 Exhibit 2- Copy of the Lease issued to the Defendant over the suit property dated 10.03.2010.**

**DW1 Exhibit 3 - Copy of the Certificate of Lease issued to the Defendant over the suit property dated 10.03.2000.**

**DW1 Exhibit 4 - Copy of an Approved Building Plan on the suit property dated 22.08.2016.**

**DW1Exhibit5- Bundle of Photographs showing destruction of the developments undertaken by the Defendant on the suit property.**

**DW1 Exhibit 6- A copy of a Bankers Cheque No. 467746 issued in favour of Commissioner of Lands dated 21.02.1999.**

**DW1 Exhibit 7- A Copy of Receipts from the Department of Lands Nairobi dated 14.11.2000 and 20.11.2000 in favour of the Defendant for KShs.100,000/-.**

46. According to the Defendant's testimony, the suit property in dispute belongs to him.

47. The Defendant did state that he was allocated the suit property in the year 1989 and took possession thereof until the year 2016 when his developments were demolished by the County Government of Uasin Gishu.

48. The Defendant did aver that a suit known as ELDORET ENVIRONMENT & LAND COURT CASE NO. 2 OF 2020 was filed against the County Government of Uasin Gishu for the unlawful demolition of the developments erected by him.
49. During this proceeding known as ELDORET ENVIRONMENT & LAND COURT CASE NO. 2 OF 202, the Defendant did learn that the suit property had also been allocated and registered in the name of the Plaintiff herein.
50. Consequently, the Defendant sought this Court to dismiss the Plaintiff's suit herein and make a declaration that he was the legitimate and lawful owner of the suit property.
51. On cross-examination, the Defendant did admit that he had not pleaded any particulars of fraud against the Plaintiff herein.
52. On being referred to DW1 Exhibit 1, the Defendant did further admit that the Letter of Allotment was in reference to an Unsurveyed Industrial Plot.
53. On further being referred to DW1 Exhibit 4, the Defendant did confirm that the approved Plan was for a residential house.
54. The Defendant nevertheless did state that he was never given any notice of demolition by the County Government of Uasin Gishu before the development was demolished.
55. As regards the proceeding known as ELDORET ENVIRONMENT & LAND COURT CASE NO. 2 OF 2020, the Defendant did testify that the Plaintiff herein was never a party therein.
56. According to the Defendant, the suit property was allocated to him lawfully and he had complied with the terms and conditions of the Letter of Allotment by paying the premium provided in the Letter of Allotment.
57. On being referred to DW1 Exhibit 6, the Defendant did admit that neither the cheque produced had any connection with

- the suit property nor did he have any official receipts to demonstrate that the cheque was in payment of the premium provided in his Letter of Allotment produced as DW 1 Exhibit 1.
58. As regards the DW1 Exhibit 7 (a), the Defendant did state that it was the Receipt to confirm payment of the Premium for an Unsurveyed Plot.
  59. The Defendant did testify that the Lease produced as DW1 Exhibit 2 was registered on 10.03.2000 and a subsequent Certificate of Lease issued in his name on same day 10.03.2000.
  60. The Defendant did admit that at the time of paying the Premium on the 20.11.2000 as contained in the Receipt produced as DW 1 Exhibit 7 (a), the Lease and the Certificate of Lease had already been issued on the 10.03.2000.
  61. The Defendant therefore did state that the Receipt produced as DW 1 Exhibit 7 (a) could not possibly be in relation to the suit property herein.
  62. The Defendant consequently did admit that he had no evidence that the sum of Kenya Shillings One Hundred and Thirty One Thousand and Eighty (KShs.131,080/-) provided for in the Letter of Allotment in his name produced as DW 1 Exhibit 1 was ever paid for.
  63. The Defendant further did admit that he had no Receipts for the Ground Survey of the property contained in the Letter of Allotment produced as DW 1 Exhibit 1 or the relevant Beacon Certificate to show the appropriate location of the property contained therein.
  64. As regards the approved Deed Plan that was issued to facilitate the issuance of his Lease, the Defendant did admit that none had been produced before the Court.
  65. The Defendant further did aver that since the Certificate of Lease in his name was issued on the 10.03.2000, he had

never done and/or procured any official search to confirm his ownership thereof.

66. The Defendant did further testify that since his registration on the 10.03.2000, he had never received any Rates Demand from the County Government of Uasin Gishu and/or made any payments of rates in relation to the suit property to Uasin Gishu County Government.
67. In re-examination, the Defendant did insist that the Lease and Certificate of Lease dated 10.03.2000 were legitimate hence making him the lawful owner of the suit property herein.
68. As regards DW 1 Exhibit 7 (a), the Defendant did insist that the said Receipt was in settlement of the premium provided in DW 1 Exhibit 1 but could not understand why the date was incorrect.
69. According to the Defendant, the Premium indicated in the Letter of Allotment produced as DW 1 Exhibit 1 was fully settled through the Cheque for Kenya Shillings One Forty-One Thousand Seven Hundred (Kshs.141,700/-) produced before the Court.
70. As regards the location of the suit property, the Defendant did aver that he had engaged the services of a Land Surveyor to identify the suit property on the ground.
71. Nevertheless, the Defendant could not state where the Deed Plan which was used to locate the suit property was.
72. At the end of this re-examination, the Defendant was discharged and the Defence did close its case.
73. The Court thereafter did direct the parties to file their final submissions before the Judgement would be written.
74. In compliance, the Plaintiff did file his final submissions dated 31.10.2025 while the Defendant did file his submissions dated 24.11.2025.

75. The Court in writing this Judgement has considered the pleadings filed by both parties, the testimonies of the parties, the documentary evidence adduced and the submissions filed thereof and identified the following issues for determination.

**ISSUE NO. 1-WHICH OF THE TWO LETTERS OF ALLOTMENT HELD BY THE PLAINTFF AND DEFENDANT DID CREATE A LEGITIMATE AND LEGAL RIGHT OF OWNERSHIP OF THE SUIT PROPERTY?**

**ISSUE NO. 2- WHICH OF THE LEASE AGREEMENTS AND CERTIFICATES OF LEASE BETWEEN THE PLAINTIF AND THE DEFENDANT IS THE LEGITIMATE AND LAWFUL?**

**ISSUE NO. 3 - WHETHER THE PLAINTIFF IS ENTITLED TO THE RELIEFS SOUGHT IN THE PLAINT?**

**ISSUE NO.4 - WHETHER THE COUNTER CLAIM IS MERITED?**

**ISSUE NO. 5 - WHO SHALL BEAR THE COSTS OF THIS SUIT AND COUNTER-CLAIM?**

76. Having identified the above issues for determination, the same will now be discussed as provided under.

**ISSUE NO. 1-WHICH OF THE TWO LETTERS OF ALLOTMENT HELD BY THE PLAINTFF AND DEFENDANT DID CREATE A LEGITIMATE AND LEGAL RIGHT OF OWNERSHIP OF THE SUIT PROPERTY?**

77. The first issue for determination is which Letter of Allotment between the one held by the Plaintiff dated 18.10.1990 and the one held by the Defendant dated 18.10.1989 created a legitimate and lawful ownership over the suit property herein.

78. To begin, the Court will look at the Plaintiff's Letter of Allotment dated 18.10.1990.

79. According to the testimony of the Plaintiff, the Commissioner of Land did issue him with a Letter of Allotment dated 18.10.1990 which was for a property described as UNSURVEYED INDUSTRIAL PLOT within ELDORET MUNICIPALITY measuring approximately 0.84 of a Hectare which was produced as PW 1 EXHIBIT 1.
80. One of the terms and conditions in the Letter of Allotment dated 18.10.1990 was the payment of Kenya Shillings One Hundred and Hundred and Thirty-One Thousand and Eighty (KShs.131,080/-).
81. The Plaintiff did state that the Letter of Allotment dated 18.10.1990 was duly accepted and the sum of Kenya Shillings One Hundred and Thirty-One Thousand and Eighty (KShs.131,080/-) duly made thereafter.
82. However, during the Survey exercise by the County Land Surveyor, the portion identified on the ground was 0.5091 of a hectare and not 0.84 of a Hectare as provided in the Letter of Allotment dated 18.10.1990.
83. It was on this basis that the Commissioner of Land did issue a fresh Letter of Allotment dated 17.10.1994 to the Plaintiff for the actual portion of 0.5091 of a Hectare which the Plaintiff did produce as PW 1 Exhibit 2.
84. In the second Letter of Allotment dated 17.10.1994, the premium payable by the Plaintiff in acceptance to the same was re-assessed.
85. It is critical to point out that in the Letter of Allotment dated 17.10.1994 which is produced as PW 1 Exhibit 2, the Commissioner of Lands does acknowledge the payment of Kenya Shillings One Hundred and Thirty-One Thousand and Eighty (KShs.131,080/-) and due to the reduced size of the portion allocated to the Plaintiff gives a credit of Kenya Shillings Thirty-Two Thousand Six Hundred (Kshs.32,600/-) as an over payment.

86. The second Letter of Allotment is the one dated 18.10.1989 issued in favour of the Defendant which was produced as DW 1 Exhibit 1.
87. In this Letter of Allotment dated 18.10.1989, the Defendant was required to accept the same and make a payment of Kenya Shillings One Hundred and Thirty-One Thousand and Eighty (KShs.131,080/-).
88. The Defendant did produce a Banker's Cheque No. 467746 dated 21.02.1990 for a sum of Kenya Shillings One Hundred and Forty Thousand Seven Hundred (KShs.140,700/-) which was produced as DW 1 Exhibit 6.
89. However, the Defendant did not produce the Receipt from the Commissioner of Lands in acknowledging the amount of Kenya Shillings One Hundred and Forty Thousand Seven Hundred (KShs.140,700/-).
90. Similarly, the Defendant on cross-examination did admit that there was no document linking the payment of the Banker's Cheque produced as DW 1 Exhibit 6 to the suit property herein.
91. The only document which the Defendant was expected to have presented in Court to link the Banker's Cheque produced as DW 1 Exhibit 6 was the Pay In-Slip filled by the Defendant prior to depositing the said Banker's Cheque which would have identified the property which the funds were to be applied on.
92. The failure to produce the Pay In-Slip for the Bankers Cheque produced as DW 1 Exhibit 6 and the Receipt by the Commissioner of Lands speaks to the reality that this payment was never made and/or acknowledged by the Commissioner of Lands in line with the terms and conditions

provided in the Letter of Offer dated 18.10.1989 held by the Defendant.

93. The Defendant sought to rely on two receipts dated 01.11.2000 and 20.11.2000 amounting to Kenya Shillings One Hundred Thousand (KShs.100,000/-) from the Department of Lands produced as DW 1 Exhibit 7 (a) and (b).
94. To begin with, even if the Court was to assume that the two Receipts dated 01.11.2000 and 20.11.2000 were in payment of the Premium demanded in the Letter of Allotment dated 18.10.1989, it is clear that these Receipts partially settled the required amount of Kenya Shillings Kenya Shillings One Hundred and Thirty-One Thousand and Eighty (KShs.131,080/).
95. The Defendant therefore was left with a sum of Kenya Shillings Thirty-One Thousand and Eighty (KShs.31,080/-) which was still due to the Commissioner of Lands before he could be deemed to have accepted and complied with the terms and conditions contained in the Letter of Allotment dated 18.10.1989.
96. Unfortunately, the two Receipts dated 01.11.2000 and 20.11.2000 amounting to Kenya Shillings One Hundred Thousand (KShs.100,000/-) produced as DW 1 Exhibit 7 (a) and (b) were issued after the Defendant had already procured the Lease Agreement and Certificate of Lease both dated 10.03.2000 and 10.03.2000 respectively.
97. The Defendant in re-examination did not have any explanation as to why a payment made on the 21.02.1990 through a Banker's Cheque to the Commissioner of Lands would be receipted in two separate Receipts dated 01.11.2000 and 20.11.2000.
98. Looking at the above facts, it is clear that in the mind of this Court that the two Receipts dated 01.11.2000 and 20.11.2000

and produced by the Defendant as DW 1 Exhibit 7 (a) and (b) were not in acknowledgement of the Banker's Cheque dated 21.03.1990 produced as DW 1 Exhibit 6.

99. As such, this Court is of the considered view and finding that the Defendant herein did not accept and/or comply with the terms and conditions of the Letter of Allotment dated 18.10.1989 if any existed and/or was issued by the Commissioner of Lands as alleged.

100. In essence, this Court hereby further makes a finding that the Letter of Allotment which created a legal right and/or ownership over the suit property was the one initially dated 18.10.1990 and re-issued on the 17.10.1994 in the name of the Plaintiff herein.

**ISSUE NO. 2- WHICH OF THE LEASE AGREEMENTS AND CERTIFICATES OF LEASE BETWEEN THE PLAINTIF AND THE DEFENDANT IS THE LEGITIMATE AND LAWFUL?**

101. The second issue for determination is which Lease and Certificate of Lease between the Plaintiff and the Defendant is legitimate and lawful.

102. The Plaintiff did produce a Lease Agreement dated 28.10.2019 and a Certificate of Lease dated 09.12.2019 as PW 1 Exhibit 5 & 7.

103. The Defendant on the other hand did produce a Lease Agreement dated 10.03.2010 and a Certificate of Lease dated 10.03.2010 as DW 1 Exhibit 3 & 4.

104. In an effort to determine which of the ownership documents held by the Plaintiff and the Defendant is lawful or not, the Court will first deal with those held by the Plaintiff.

105. In Issue No. 1, the Court hereby made a finding that the Plaintiff herein did properly accepted the terms and conditions contained in the Letter of Allotment dated

18.10.1990 and the subsequent Letter of Allotment dated 17.10.1994.

106. As such, the Plaintiff's Letter of Allotment dated 17.10.1994 over the suit property was found to be legitimate and binding keeping in mind that it was lawfully accepted and the terms and conditions prescribed by the Commissioner of Lands complied with.
107. Based on this acceptance and compliance, the Chief Land Registrar did forward the legitimate Lease Agreement relating to the suit property in favour of the Plaintiff on the 29.10.2019 to the County Land Registrar for execution and registration as demonstrated in the document produced as PW 1 Exhibit 6.
108. Upon receipt of the Letter dated 29.10.2019 from the Chief Land Registrar by the County Land Registrar, the Plaintiff did execute the Lease Agreement issued on the 28.10.2019 and had it registered on the 09.12.2019.
109. It was upon registration of the Lease Agreement in relation to the suit property in favour of the Plaintiff that the Certificate of Lease dated 09.12.2019 was issued.
110. The Plaintiff also place before this Court the relevant Certified Copies of the Survey Maps that did create the suit property provided in the Letters of Allotments dated 18.10.1990 and 17.10.1994 are PW 1 Exhibit 3.
111. Turning to the Defendant's ownership documents, it is important to state that in Issue No.1 hereinabove, this Court did make a finding that there was no proof that the Defendant did accept and/or comply with the terms and conditions prescribed in the Letter of Allotment issued in his name dated 18.10.1989.

112. In addition to the above, the Defendant did not provide the Letter forwarding the Lease Agreement of the suit property in his favour to the County Land Registrar Uasin Gishu for execution and registration.
113. It is important to point out that the Letter forwarding any Lease(s) from the Chief Land Registrar to the County Land Registrar is usually crucial as it demonstrates the source and validity of the Leases that are contained therein.
114. In addition to the above, the Defendant could not produce the relevant Survey Map and/or Part Development Plan approved by the Director of Survey which was used by the Commissioner of Lands and/or the Chief Land Registrar to prepare the Lease Agreement in favour of the Defendant.
115. The failure by the Defendant to produce the Survey Map or Part Development Plan approved by the Director of Survey in support of the Lease Agreement in his favour was a fatal blow to his ownership of the suit property.
116. It is clear in the mind of this Court that no Lease Agreement can be processed and issued by the Chief Land Registrar without an Approved Survey Map and/or Part Development Plan by the Director of Survey.
117. Consequently, the omission to produce the Approved Survey Plan and/or Part Development Plan in support of the Lease Agreement in favour of the Defendant meant that the same was fraudulent.
118. The Defendant's Lease Agreement dated 10.03.2010 was one which did not have any specified portion of land capable of alienation as intended by law.
119. In case of **DINA MANAGEMENT LIMITED-VERSUS- THE COUNTY GOVERNMENT OF MOMBASA & 5 OTHERS**

**(PETITION 8 (E010) OF 2021 (2023) KESC 30 (KLR)**, the Supreme did state as follows; -

***“As held by the Court of Appeal in Munyu Maina vs Hiram Gathiha Maina Civil Appeal No 239 of 2009 (2013) eKLR, where the registered proprietor’s root title is under challenge, it is not enough to dangle the instrument of title as proof of ownership.***

***It is the instrument that is in challenge and therefore the registered proprietor must go beyond the instrument and prove the legality of the title and show that the acquisition was legal, formal and free from any encumbrance including interests which would not be noted in the register.”***

120. In essence therefore, this Court is of the considered view and finding that the Lease Agreement issued on the 28.10.2019 and registered on the 09.12.2019 and well as the Certificate of Lease dated 09.12.2009 in the name of the Plaintiff are the legitimate and lawful ownership documents of the suit property.

121. On the other hand, the Lease Agreement registered on the 10.03.2000 and the Certificate of Lease issued on the 10.03.2000 in the name of the Defendant are fraudulent and illegal.

### **ISSUE NO. 3 - WHETHER THE PLAINTIFF IS ENTITLED TO THE RELIEFS SOUGHT IN THE PLAINT?**

122. The third issue is whether or not the Plaintiff is entitled to the reliefs sought in the present suit.

123. Based on the findings made in Issue No. 1 and 2, this Court is clear in its mind that the legitimate and lawful ownership documents over the suit property are those in the name of the Plaintiff.

124. Consequently, the Plaintiff is entitled to Prayer No. A and B of the Plaint dated 22.10.2020.

125. As to Prayer No. C, the Plaintiff did not specify whether the damages being sought are general or special damages.

126. During the hearing, the Plaintiff did not also give any evidence on the claim of damages.

127. Consequently, the Court declines to grant the same where it has not been proved.

#### **ISSUE NO. 4 - WHETHER THE COUNTER CLAIM IS MERITED OR NOT?**

128. The fourth issue is whether or not the Defendant's Counter-claim is merited or not.

129. It is clear that based on the findings made in Issue No. 1 and 2, the Lease Agreement registered on the 10.03.2000 and the Certificate of lease issued on the 10.03.2000 were illegal and fraudulent.

130. Consequently, the Defendant does not have any legitimate and/or lawful documents relating to the suit property and the reliefs sought in the Counter-Claim are not merited and cannot be granted.

#### **ISSUE NO. 5 - WHO SHALL BEAR THE COSTS OF THIS SUIT?**

131. The Plaintiff having successfully prosecuted his case against the Defendant, the Defendant is condemned to pay costs.

132. In addition to the above, the Defendant did not manage to successfully prosecute the Counter- Claim against the Plaintiff and is therefore condemned to pay costs of the Counter-claim.

### **CONCLUSION**

133. In conclusion, this Court hereby makes the following Orders in determination of the present suit;-

**A. THE PLAINT DATED 22.10.2020 IS MERITED.**

**B. A DECLARATORY ORDER BE AND IS HEREBY MADE HOLDING THAT THE SUIT LAND PARCEL ELDORET MUNICIPALITY BLOCK 10/140 BELONGS TO THE PLAINTIFF.**

**C. AN ORDER BE AND IS HEREBY MADE THAT THE DEFENDANT'S LETTER OF ALLOTMENT DATED 18/10/1989, THE LEASE AGREEMENT DATED 18.02.2000 & REGISTERED ON THE 10.03.2000 AS WELL AS THE CERTIFICATE OF LEASE ISSUED ON THE 10.03.2000 IN FAVOUR OF THE DEFENDANT OVER THE PROPERTY KNOWN AS ELDORET MUNICIPALITY BLOCK 10/140 ARE FRAUDULENT, ILLEGAL AND THEREFORE STAND CANCELLED FORTHWITH.**

**D. THE COUNTY LAND REGISTRAR, UASIN GISHU BE AND IS HEREBY DIRECTED TO CANCEL AND/OR EXPUNGE THE REGISTER OR WHITECARD OF THE PROPERTY KNOWN AS ELDORET MUNICIPALITY BLOCK 10/140 IN THE NAME OF JOSEPH KIPKOECH CREATED PURSUANT TO THE LEASE AGREEMENT DATED 10.03.2000 & THE CERTIFICATE OF LEASE ISSUED ON THE 10.03.2000.**

**E. AN ORDER OF PERMANENT INJUNCTION BE AND IS HEREBY ISSUED RESTRAINING THE DEFENDANT, HIS AGENTS, EMPLOYEES, ASSIGNS AND/OR ANY OTHER PERSON AND/OR ENTITY CLAIMING OWNERSHIP UNDER THE TITLE OF THE DEFENDANT FROM ENTERING, USING, TRANSFERRING, DEALING WITH AND OR INTERFERING WITH THE PLAINTIFF'S OWNERSHIP AND/OR OCCUPATION IN WHATSOEVER AND WHICHEVER MANNER WITH THE PROPERTY KNOWN AS ELDORET MUNICIPALITY BLOCK 10/140.**

**F. THE DEFENDANT IS CONDEMNED TO PAY COSTS OF THE SUIT AS WELL AS THE COUNTER-CLAIM TO THE PLAINTIFF HEREIN.**

**DATED, SIGNED and DELIVERED in ELDORET this 6<sup>TH</sup> DAY OF FEBRUARY, 2026.**

**EMMANUEL.M. WASHE  
JUDGE**

**IN THE PRESENCE OF:**

Court Assistant: Brian

Plaintiff Counsel: Mr. Kipnyekwei for the Plaintiff

Defendant Counsel: Mr. Owuor holding brief for Mr. Mwaniki