

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT KITALE**  
**ELC NO. 14 OF 2018**

**PAUL  
KIPTOO-----  
PLAINTIFF**

**VERSUS**

**JOSEPHINE JEMAIYO ROTICH-----  
DEFENDANT**

**JUDGMENT**

1. The plaintiff approached the court through a plaint dated **7/2/2018**. He seeks:
  - (a) **Declaration that he is a lawful owner of Land Title No. Trans Nzoia/Milimani/1544, hereinafter the suit property.**
  - (b) **Permanent injunction restraining the defendant, her agents, servants, or whoever is acting on her behalf, from cutting, causing any tree to be cut, or interfering with his use and enjoyment of the suit property.**
2. The plaintiff contends that by a sale agreement dated **9/6/2008**, he bought the suit property then known as **Plot No. 1544 Milimani Settlement Scheme**, measuring approximately **5** acres or thereabouts, from Thomas Kiprono Tiony, who needed money to clear his loan with the Settlement

Fund Trustees, whereafter the said seller transferred the land as **Title No. Trans Nzoia/Milimani/1544**, to him.

- 3.** The plaintiff avers that in **2009**, he took possession of the land and planted **8,000** cypress trees, currently valued at **Kshs.15,000/=** per piece. The plaintiff avers that on **9/1/2018**, he was shocked to receive a letter from the defendant's advocates alleging that he was occupying her land and that the defendant had threatened to enter, forcibly evict, and deprive him of an estimated investment of **Kshs.120,000,000/=**.
- 4.** The defendant opposed the suit through a statement of defence and counterclaim dated **26/3/2018**, terming the suit as misconceived, misplaced, bad in law, based on wild, imagined, and strange allegations. The defendant averred that the plaintiff was occupying her land known as **Plot No. 1331** measuring **2.5 Ha** or thereabout, situated in Milimani Settlement Scheme and not **Plot No. 1544** as alleged.
- 5.** The defendant averred that the subject matter had been before the Local Administration Police and the

Land Settlement Office, of which the plaintiff had been advised to give vacant possession to her in vain.

6. By way of a counterclaim, the defendant averred that the plaintiff was in actual occupation and use of her land, **Plot No. 1331** measuring **2.5 Ha**, and not **Plot No. 1544** as alleged, which he has, despite notices, declined to give vacant possession, preventing the defendant from its use, possession, occupation, and enjoyment of the same since **2008**.
7. The defendant avers that the plaintiff's acts amount to trespass to **Plot No. 1331** Milimani Settlement Scheme measuring **2.5 Ha**, with the assistance of the OCS Cherangani Police station and the Assistant County Commissioner, Cherangani Division.
8. During the trial, **Paul Kiptoo** testified as **PW1**. He relied on a witness statement dated **8/2/2018** as his evidence-in-chief. PW1 told the court that he is the registered owner of Land Parcel No. **Trans Nzoia/Milimani/1544**, as per a copy of the title deed before the court. He said that he is running a registered private forest on the land, which has about **8,000** cypress trees, currently valued at **KShs.15.000/=**, per tree.

- 9.** PW1 said that on **9/1/2018**, he received a letter from the defendant alleging that he had unlawfully and forcefully invaded her land, which he responded to with a letter dated **12/1/2018**. He denied knowledge of the existence of Plot No. **1331** belonging to the defendant, which he has been occupying, his land, as was shown to him at the time he bought it.
- 10.** PW1 said that he did not obtain a letter of allotment from the seller. Again, PW1 said that he wrote a letter dated **30/1/2018** to the National Land Commission explaining that he had been living on the suit property, hence he was not a squatter. PW1 said that when the land surveyor visited the ground to assess the access road, the defendant was unable to show them or locate her plot on the ground.
- 11.** Further, PW1 said that he was not ready to vacate his land, which he has lived on and developed for **22** years. Regarding parcel No. **1331**, PW1 said that it was separate from the land he currently occupies on the ground.
- 12. Josephine Jemaiyo Rotich** testified as **DW1**. She relied on a witness statement dated **26/3/2018** as her evidence-in-chief. DW1 told the court that she is the owner of Plot No. **1331** Milimani Settlement

Scheme measuring **2.5 Ha**, which was allocated to her by the Director of Land Adjudication and Settlement, sometime in **2003**. After she paid a down payment of **Kshs.1,050/=**, she was shown the land on the ground, together with its beacons.

- 13.** DW1 said that out of the blue, the plaintiff came, forcefully entered the suit property, alleging it was his, and warned her that she should not set her foot therein, otherwise he would harm her. DW1 said that the plot that the plaintiff allegedly bought from Thomas Kiprono, as Plot No. **1544**, is far away from her plot. DW1 said that efforts to resolve the issue out of court with the relevant offices have been unsuccessful, since the plaintiff is evasive.
- 14.** DW1 said that she has suffered a lot as the plaintiff has denied her use, possession, and occupation of the suit property for years. DW1 said that the plaintiff is misleading the court by claiming land that does not belong to him, and he should yield vacant possession or be evicted from the suit property.
- 15.** DW1 relied on a copy of the area map, an allotment letter dated **19/2/2003**, a payment receipt dated **10/3/2003**, a chief's letter dated **18/11/2017**, a demand notice dated **9/1/2018**, a reply dated

**12/1/2018**, and a letter dated **30/2/2018** as **D. Exhibits No. (1)-(8)**. DW1 said that he was taken to the suit property upon allocation in **2003**. He found the plaintiff in occupation, though illegally, according to the area Chief and the Land Adjudication Officer.

**16.** DW1 said that she was told to wait as the plaintiff was also summoned to attend the land adjudication and settlement office, but declined to do so. DW1 said that the plaintiff had already made development on the land, hence her demand letter for him to vacate her land. DW1 said that she was unable to take vacant possession of the land to date, since the plaintiff has forcefully remained therein.

**17. Boaz Amuza** testified as **DW2**. He told the court that following an order dated **2/3/2022**, he visited the two parcels of land and prepared a report dated **4/2/2023**, now before the court. DW2 said that his findings were that Parcel No. **1544** and **1331** are apparently **15** kilometers apart. According to him, parcel No. **1544** is not occupied or fenced, while parcel No. **1331** is under the occupation of the plaintiff.

**18. DW2** said that according to the records held by the Land Adjudication office, parcel No. **1544** belongs to

the plaintiff, while the defendant owns parcel No. **1331**, now occupied by the plaintiff. He produced his report as **D. Exhibit No. (8)**. DW2 said that what is in dispute is not ownership, but who occupies what on the ground.

- 19.** DW2 confirmed that, unlike parcel No. **1544**, which is unoccupied, the plaintiff has extensively developed parcel No. **1331** by erecting three semi-permanent houses, a store, and a forest of cypress trees. DW2 said that it is true that there are many pending disputes in the Milimani Settlement Scheme over both ownership and occupation, since there is a mismatch between the ground acreage and the allotment letter.
- 20.** DW2 said that there are many allottees in the settlement scheme who have allotment letters but are not in occupation of such plots on the ground. DW2 said that he could not rule out double allocation in this instance; otherwise, he was not party to pointing out the exact localities of the allocated plots to the two parties during the allocation process.
- 21.** The defendant relies on written submissions dated **29/1/2026**. It is submitted that the burden was on the plaintiff to prove his claim on ownership,

possession, and entitlement to the land in question on the ground, with credible, cogent, and consistent evidence. In this case, the defendant submits that whereas ownership is not disputed, the documents in the plaintiff's possession do not correspond with what he actually occupies, has fenced and developed on the ground, as per DW2, and the report produced as **D. Exhibit No. (8)**.

- 22.** The defendant submits that instead of occupying parcel No. **1544**, the plaintiff has, without any justification, gone to occupy, develop, and utilise a different, separate, and distant plot, which is **15** kilometers away from where his right parcel of land is situated. The defendant submits that the plaintiff, despite demand letters to vacate the suit property, has been adamant.
- 23.** Further, the defendant submits that the plaintiff has been unable to justify under **Section 107** of the Evidence Act the basis of occupying the defendant's land. Additionally, the defendant submits that the plaintiff has not disclosed any known cause of action against him, in view of the facts and evidence before the court, since the one before the court is premised

on misidentification of land and sustained by contradictory position or evidence.

24. The defendant submits that the plaintiff's cause of action defectiveness goes to the substance rather than the forum, making it an abuse of the court process, as the plaintiff seeks to misuse the court process to legitimize an unlawful occupation.
25. The defendant submits that based on her evidence and counterclaim, she has tendered consistent, coherent, and credible expert evidence which is objective, showing that she lawfully owns the suit property on which the plaintiff is occupying on the ground, to be entitled to the reliefs sought in her counterclaim.
26. The issues calling for my determination are:
  - (1) ***If the plaintiff owns Land Title No. Trans Nzoia/Milimani/1544.***
  - (2) ***If the defendant owns Plot No. 1331, Milimani Settlement Scheme.***
  - (3) ***If the defendant has proved trespass to Plot No. 1331, Milimani Settlement Scheme.***
  - (4) ***Whether the defendant is entitled to the reliefs sought in her counterclaim.***
  - (5) ***What is the order as to costs?***

27. What the plaintiff is alleging is that he bought, was shown, took possession, developed, and became registered on **Title No. Trans Nzoia/Milimani/1544** measuring **5 acres**, now claimed by the defendant. The plaintiff has led evidence by way of a title deed issued on **3/10/2017** under Registry Index Map Sheet No. **(1)**.
28. The defendant, on the other hand, relies on a certified, gazetted, or published area map as **D. Exhibit No. (1)**, allotment letter dated **19/2/2003**, payment receipt dated **10/3/2003** from the Settlement Fund Trustees, chief's letter, demand letter, and a surveyor's report dated **12/2/2023**.
29. When there is a claim to one parcel of land by the two parties, a court interrogates the root of title to each party to determine who has a better title. A letter of allotment is a mere invitation. It confers no title to a party until the land is registered under his or her name. That was not holding in **Torino Enterprises Ltd -vs- Attorney General (2023) eKLR** and in **Dr Ngok -vs- Justice Moiwo ole Keiwua & others, Civil Application No. Nai. 60 of 1997.**

- 30.** In **Botwa Farm Co. Ltd -vs- Settlement Fund Trustee & another [2015] KEELC 348 (KLR)**, the court held that until a party clears his indebtedness with the Settlement Fund Trustees and discharges a charge to become a registered owner, he has no better title to pass as a seller of the land in question.
- 31.** In this suit, the plaintiff relies on a title deed issued on **3/10/2017**. **Sections 24, 25, and 26** of the Land Registration Act require this court to take the title contents as *prima facie* evidence that the person named therein is the absolute proprietor. However, the title is subject to challenge on account of illegality, irregularity, and acquisition through fraud, mistake, or corrupt scheme. See **Samuel Kamere - vs- Land Registrar Kajiado [2015] eKLR**.
- 32.** The defendant, on the other hand, relies on a letter of allotment which is not accompanied by any scheme plan, deed plan, or a report on the exact locality of her plot by the allocating authority in **2003**. The acceptance letter for the offer is missing. Notes showing where the plot is situated on the ground are missing.
- 33.** In **Barmasai -vs- Rono & Others Civil Appeal E068 of 2023 [2025] KECA 1489 [KLR] (19<sup>th</sup>**

**September 2025) (Judgment)**, the issue in the trial court was closure and an act of cutting down of trees on an access road which had been in existence for decades, as per the settlement scheme's original plan. The respondent had disputed its existence as alleged by the appellant. The trial court held that a Registry Index Map is the final authority, and it comes after a development plan. On appeal, the court held that a Registry Index Map is a crucial cadastral document used in the land registration system to visually represent the location and boundaries of land parcels and, therefore, is the official record maintained by the Survey of Kenya.

- 34.** The court said that, unlike a title deed, which certifies ownership, a Registry Index Map provides the geographical context, mapping out the physical existence and the present location of a property relative to its surroundings, to complement a title deed and other ownership documents, such as a green card offering a detailed layout of land parcels, their shapes, and their boundaries.
- 35.** The contention by the defendant is that her plot on the ground is where the plaintiff has been in possession, use, and occupation. She confirms that at

the time of issuance of her letter of allotment, she found the plaintiff on the ground, and was told that the plaintiff would be summoned to the Land Adjudication Settlement Offices. **D.Exhibit No. (4)** confirms those facts.

**36. D. Exhibit No. (5)** was written before the defendant obtained any title document to the suit property. **D. Exhibit No. (3)** was issued on **10/3/2003**. Between **2003** and **2017**, it is not clear if the defendant had accepted the letter of allocation and whether the land had been surveyed and the plot shown on the ground.

**37.** The defendant did not find it necessary to call evidence from the allocating authority to come and ascertain before the court the correct locality and the recorded allottee of plot No. **1544** as per the documents held by the Settlement Fund Trustees.

**38.** In **Mbau Saw Mills Ltd -vs- Attorney General & Another [2014] eKLR**. The court held that a letter of allotment confers no property rights to a person, unless there is acceptance and payment of both the standard premium and ground rent.

**39.** Evidence that the defendant, after payment of the deposit on **10/3/2003**, was documented in the

register to the allocating authority is missing. The letter has no standard premium or ground rent indicated. The basis upon which the defendant says she paid **10%** of the land deposit as per **D. Exhibit No. (3)** is not captured in the letter of allotment produced as **D. Exhibit No. (2)**.

**40.** The discrepancies in the letter of allotment as regards acceptance, payment of standard premium, and showing of the defendant the exact locality could only have been clarified by the allocating authority and not DW2, who was clear that he was not part of the allocating authority. Equally, DW2 did not base his report on any interview or annexures of the allocating authority, such as the scheme plan, demarcation records, and the area list for the settlement scheme.

**41.** In **William Anyenda -vs- Enock Bulimo & others [2016] KEELC 916 (KLR)**, there was a contestation of the locality of Plot No. **686** Milimani Settlement Scheme, said to be located **2** kilometers away from the 1<sup>st</sup> - 4<sup>th</sup> defendants' plots No. **685** and **687**. None of the parties had fulfilled their obligations with the Settlement Fund Trustees. None of the parties had advanced evidence of how they had fulfilled their

obligations with the allocating authority. The court found that the parties had no locus standi to claim ownership over their alleged properties still held by the Settlement Fund Trustees, and per the current search certificate.

- 42.** The court held that it was only the Settlement Fund Trustees who could determine the respective plot numbers' location and cause the Registry Index Map to be amended to place the same on the survey record.
- 43.** In this suit, the defendant is yet to perfect the charge to be issued with a title deed. The defendant is challenging the plaintiff's title, its locality, and placement in the registry index without a rival title deed reflective of a Registry Index Map, which places her land on the exact locality and boundaries as that occupied on the ground by the plaintiff.
- 44.** He who alleges must prove. It is the defendant who wants to challenge a title. Evidence to challenge a title deed and its Registry Index Map must be through cogent, credible, and reliable evidence showing the root title of the defendant's alleged ownership documents.

- 45.** The defendant has failed to call the allocating authority or produce a rival title deed. The defendant has testified that she found the plaintiff on the suit property and was told to wait for the Land Adjudication and Settlement Officer to sort out the issue of ownership and occupation. Evidence of how it was sorted out is lacking from **2003** to the present.
- 46.** Trespass refers to the intrusion of private land belonging to a registered owner who has to prove immediate and exclusive possession as opposed to ownership, as held in **M'Mukunya -vs- M'Mbijiwe (1984) eKLR.** The defendant has failed to prove possession of the suit before the plaintiff's entry. The plaintiff holds a superior title to the suit property.
- 47.** The defence and counterclaim is found without merits. It is dismissed with costs.
- 48.** The upshot is that I find the plaintiff has proved his case to the required standards.
- (a) A declaration is hereby issued that the plaintiff is a lawful owner of Land Title No. Trans Nzoia/Milimani/1544.**
- (b) An order of permanent injunction is hereby issued restraining the defendant, her agents, servants, or whoever is acting on**

**her behalf, from cutting, causing any tree to be cut, or interfering with his use and enjoyment of the Land Title No. Trans Nzoia/Milimani/1544.**

**(c) Costs of the suit.**

**49.** Orders accordingly.

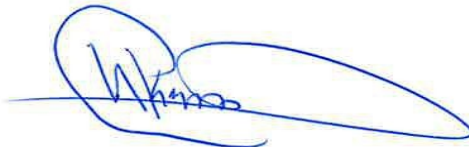
**Judgment dated, signed, and delivered via Microsoft Teams/Open Court at Kitale on this 24<sup>th</sup> day of March 2026.**

**In the presence of:**

Court Assistant - Dennis

Ombaso for Chebii for the defendant present

D. Wanyama for the plaintiff absent



**HON. C.K. NZILI  
JUDGE, ELC KITALE.**