



Lenguro v Extrecon Engineering Co Ltd & another (Environment and Land Case E007 of 2024) [2025] KEMC 220 (KLR) (15 August 2025) (Judgment)

Neutral citation: [2025] KEMC 220 (KLR)

**REPUBLIC OF KENYA
IN THE MARALAL LAW COURTS
ENVIRONMENT AND LAND CASE E007 OF 2024
AT SITATI, SPM
AUGUST 15, 2025**

BETWEEN

LAWRENCE LENGURO PLAINTIFF

AND

EXTREECON ENGINEERING CO LTD 1ST DEFENDANT

COUNTY GOVT OF SAMBURU 2ND DEFENDANT

JUDGMENT

1. This suit commenced by way of a plaint dated 2nd August, 2024 verified by an affidavit of similar date. The reliefs sought included –
 - a. A declaration that the plaintiff is the legal owner of the plot number 01 Archers Post, Police area in Archers Post market and entitled to exclusive right of possession and occupation of the plot
 - b. Permanent injunction restraining their defendants whether by themselves or their servants or agents or otherwise from trespassing into, alienating, depositing building materials, constructing thereon and/or interfering in any way with the property known as Plot O1 Archers Post, police area within Archers Post market
 - c. Costs of the suit
 - d. Any other or further relief as this Honourable Court may deem fit to grant

Accompanying the plaint were –

The plaintiff's written witness statement
List and bundle of documents containing Allocation letter dated 12th April, 2017
Letter from the Land and Physical Planning department of Samburu County confirming land ownership dated 19th October, 2020
Certificate of business registration dated 19th July, 2022
Demand letter to the County Attorney, County



Government of Samburu dated 15th July, 2024
Various fees receipts of rates paid
Photographs of the plot

2. An interlocutory application praying for various temporary reliefs was also filed and disposed of by the trial court. The firm of D.K. Lekoona & Company Advocates represented the plaintiff.
3. The 1st defendant company filed no appearance no defence in the suit. The suit was, however, opposed by the 2nd defendant County Government which filed a Statement of defence dated 23rd August, 2024. The 2nd defendant pleaded and particularized fraud by the plaintiff, denied liability and prayed for a dismissal of the suit with costs. Khisa & Company Advocates represented the 2nd defendant.

The Plaintiff's Case

4. PW1 Lawrence Lenguro adopted his witness statement as his testimony. In summary, he told the court that he was allocated the plot O1 Archers Post, Police Area by the defunct Samburu County Council and he developed the said plot by putting up a small butchery, church and restaurant. He added that he had been diligently paying the rates.
5. His complaint was that sometimes in July 2024 a contractor by the name Enow Abdullahi Abdiof the 1st defendant visited his plot and began harassing him and ordering him to vacate the said plot to pave way for an alleged affordable housing project. After receiving the threats of eviction, he filed this suit. He relied on the above listed documents in evidence.

In cross-examination, the following came to light: -

The allotment letter was issued to him in 2017 whereupon he paid Kshs 10,000 allotment fee; he developed the plot within 1 year of being allotted it but he had not produced the approved building plans; he added that the plot was developed in 2022 his grievance against the 2nd defendant was that there was an attempt of unlawful eviction he added that conditions 1 and 2 of the allotment required compliance before ownership could take effect

6. In re-examination, he told the court that there was no requirement for written acceptance. He added that the 2nd defendant had not complained of any rate defaults by the plaintiff. The photos showed tractors harassing him in the plot. He had a rates clearance certificate.
7. The plaintiff lodged written submissions dated 29th April, 2025 relying on the authority of *Kinyanjui Kamau –v- George Kamau* where the Court of Appeal at Nairobi referred to the case of *Vijay Morjaria –v Nansingh Madhu Singh Darbar & another (2020) eKLR (Civil Appeal no. 106 of 2000)* where it was held that fraud must be specifically pleaded and strictly proved. The plaintiff submitted that there was no proof of fraud.

The 2nd Defendant's Case

8. The 1st defendant neither appeared nor filed any pleadings.
9. The 2nd defendant closed their case without calling any witnesses but lodged written submissions dated 23rd June, 2025. It was submitted that the plaintiff did not disclose a reasonable cause of action against the 2nd defendant County Government. As to what is a cause of action, the 2nd defendant submitted the definition set out by the Court of Appeal in *DT Dobie & Co (K) Ltd V Muchina*, as



cited with approval in *Susan Rokih v Joyce Kandie & 6 others* [2018] eKLR when the court defined a cause of action as:

“An action with some chance of success when allegations in the plaint only are considered. A cause of action will not be considered reasonable if it does not state such facts as to support the claim prayer.

10. It was submitted that the Plaintiff could not be an owner as he neither pleaded nor produced a certificate of lease and further while it was true that he had an allotment letter the said letter of allotment confer ownership as held by the Supreme Court of Kenya in the authority of *Torino Enterprises Limited v Attorney General* (Petition 5 (E006) of 2022) [2023] KESC 79 (KLR) (22 September 2023) (Judgment) where the learned Judges held that: -

“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.”

11. It was submitted that the Plaintiff had failed to produce any evidence showing that a Certificate of Lease was ever issued, that the reserved purchase price was paid, or that the conditions outlined in the Letter of Allotment were complied with. It was contended by the 2nd defendant that the mere payment of land rent does not confer ownership rights and the letter of confirmation of ownership issued by the 2nd defendant did not confer ownership.

Issue For Determination

12. The only issue to be decided is whether or not the plaintiff had proved his claim on a balance of probabilities.
13. From the material placed before the court, the court is satisfied that the plaintiff was and remains as the legal allottee of the subject plot vide the Allotment letter produced in court accompanied by rates payments receipts. While it was true that by the time of the filing of the suit he had not extracted the Certificate of Lease, the evidence shows that when he was allotted the plot he accepted the offer of allotment by his conduct, took possession and constructed structures where he ran a butchery, restaurant and church.
14. Further, there is direct factual evidence showing that he has been in active possession and occupation of the said suit land. The 1st defendant offered no contrary evidence as to who else was in possession and neither did the 2nd defendant. There is no evidence to show that the 2nd defendant County Government initiated any process to repossess the suit land or revoke the allotment letter on any grounds of breach of allotment conditions if any.
15. In the court's further observation, there was no evidence of even a single act of harassment from the 2nd defendant. There is no evidence of any County Government employee visiting the plot in the company of the 1st defendant. That being so, it cannot be fairly said that the plaintiff had a reasonable cause of action against the 2nd defendant within the meaning assigned to the phrase by the Court of Appeal in *D.T. Dobie & Company (Kenya) Limited v Joseph Mbaria Muchina & another* [1980] KECA 3 (KLR) (CB Madan, CHE Miller, KD Potter JJ.A.). This authority was relied on by the 2nd defendant County Government. In it, madan ja had this to say on what is a reasonable cause of action:

“No exact paraphrase can be given but I think reasonable cause of action means a cause of action with some chance of success when (as required by paragraph (2) of the rule) only the allegations in the plaint are considered-.”



per Lord Pearson in Drummond-Jackson V.B.M.A. (1970) 1 W.L.R. 688 at p. 696.

"A cause of action is an act on the part of the defendant which gives the plaintiff his cause of complaint."

Words and Phrases, Vol, 1 p. 228.

There is some difficulty in affixing a precise meaning to the term reasonable cause of action..... In point of law, and consequently in the view of a Court of justice, every cause of action is a reasonable cause. But; obviously some meaning must be assigned to the term 'reasonable'.....a pleading will not be struck out unless it is demurrable and something worse than demurrable."

16. With no single County government employee or officer either visiting the scene or dispatching any written communication or notice to the plaintiff harassing him in any way while accompanied by the 1st defendant, it cannot be said that there was evidence of collusion between the 1st and 2nd defendants as alleged in the attempt to unlawfully evict him.
17. As was correctly proved by the plaintiff himself, nowhere has the County Government complained of rates default by the plaintiff and there is no evidence of any unlawful acts or omissions and no grievances by the said 2nd defendant to warrant legal protection or intervention by the court. Admittedly, the allotment letter conferred no ownership but granted the plaintiff a solid legal foundation to pursue the ownership process to its logical conclusion. The 2nd defendant has been receiving rates from the allottee and cannot turn around and claim that he is a stranger to the suit land without Minutes for Plot Re-Allocation to the contrary. The 2nd defendant did not Counterclaim for reversion to itself of the plot in question and nothing further turns on the issue of ownership since the plaintiff remains the legal allottee.
18. Conversely, the 2nd defendant's claim that the allotment letter was a fraud was unproved since there was no forensic document examination report under section 77(3) of the Evidence Act to prove this bare allegation.
19. The clear evidence by the plaintiff pinpointed the 1st defendant only as the offending party. It was the 1st defendant only which dispatched bulldozers and heavy machinery to attempt to unlawfully evict the plaintiff from the subject plot. The 1st defendant did not challenge the suit.
20. In the result, the court enters judgment in favour of the plaintiff as against the 1st defendant only in the following terms:
 - a. A declaration that the plaintiff is the legal owner of the plot number 01 Archers Post, Police area in Archers Post market and entitled to exclusive right of possession and occupation of the plot
 - b. Permanent injunction restraining the defendants whether by themselves or their servants or agents or otherwise from trespassing into, alienating, depositing building materials, constructing thereon and/or interfering in any way with the property known as Plot O1 Archers Post, police area within Archers Post market
 - c. Costs of the suit
21. The claim against the 2nd defendant is dismissed with costs since no single tortious act was proved against the 2nd defendant County Government meaning that no reasonable cause of action was established.



22. With no counterclaim from the 2nd defendant, the court cannot order reversion of the plot to the county while a validly issued allotment letter is still in his possession.

Right of appeal is 30 days.

DATED, READ AND SIGNED AT MARALAL THIS 15TH DAY OF AUGUST, 2025

HON.T.A. SITATI

SENIOR PRINCIPAL MAGISTRATE

MARALAL LAW COURTS

Mr. Kiriaku Adv Hb For Lekoona Adv For The Plaintiff

Miss Barasa Hb For Khisa Adv The Defendant

Samwel Lemuya Court Assistant

