

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYAMIRA
ELCLC No. E007 OF 2024

**BOKIBARORI TRADING COMPANY LIMITED
PLAINTIFF**

VERSUS

**NYAMIRA COUNTY GOVERNMENT 1ST
DEFENDANT**
**THE LAND REGISTRAR NYAMIRA
2ND DEFENDANT**
**THE LAND REGISTRAR KISII
3RD DEFENDANT**
**THE LAND SURVEYOR NYAMIRA COUNTY 4TH
DEFENDANT**
**THE LAND SURVEYOR KISII COUNTY
5TH DEFENDANT**
**THE ATTORNEY GENERAL
6TH DEFENDANT**
**HONOURABLE NYAMBEGA GISESA - MEMBER OF
COUNTY ASSEMBLY, RIGOMA WARD 7TH
DEFENDANT**

JUDGMENT

1. The Plaintiff moved the Court through Plaintiff dated 2nd April 2024 in which it averred that it was the owner of parcels of land known as Keroka Parcel Numbers 137 and 138 (suit properties) by virtue of an allotment by the defunct Keroka Town Council. That in the year 2020, the First Defendant purported to reallocate the suit properties and unlawfully demolished structures therein.

2. The Plaintiff therefore prayed for judgment against the Defendants for:

- a. *A declaration that the actions and/or omissions by the 1st and 7th Defendants herein, of entering into the suit properties, demolishing permanent structures thereon and undertaking constructions thereof was unlawful, illegal and a violation of the legitimate proprietary rights of the Plaintiff over the suit properties.*
- b. *An order compelling the 2nd Defendant to effect registration of Keroka Market Parcels number 137 and 138 as per the directions of the Chief Land's Registrar letters dated 2nd November 2016 and 24th November 2016 within 30 days from the date of Judgment.*
- c. *An order of permanent injunction against the 1st and 7th Defendants, their agents, servants, employees and such persons acting through their instructions from encroaching on and/or in any way interfering with the Plaintiff's quiet possession of Keroka Market Parcel numbers 137 and 138.*
- d. *An order directing the 1st and 7th Defendants to surrender vacant possession of the suit properties within 30 days of entry of judgement, and in default, a supervised eviction order be and is hereby issued for removal of the illegally constructed structures on the suit properties.*

- e. The Officer Commanding Station (OCS), Keroka Police Station to supervise enforcement of prayer (d) above.*
 - f. In alternative to (d) and (e) above, an order compelling the 1st Defendant to compensate the Plaintiff at the current market value of the suit properties together with interests at Court rates from the date of wrongful entry.*
 - g. General damages for trespass and/or Mense profits*
 - h. Costs for this suit be borne by the Defendants.*
3. The First and Seventh Defendants filed Statements of Defence dated 23rd September 2024 and 3rd October 2024, respectively, through which they denied the Plaintiff's averments and prayed that the suit be dismissed with costs.
 4. The Second to Sixth Defendants filed Memorandum of Appearance dated 11th April 2024 but did not file any Statement of Defence or compliance documents.
 5. Charles Mosongo Hodge (PW1) adopted his witness statement dated 2nd April 2024 and produced copies of documents in Plaintiff's list of documents dated 11th June 2024. He stated in the statement that the Plaintiff acquired ownership of the suit properties situate within Keroka Town and adjacent to each other on 5th February 1997 through an allocation made to it by the defunct Keroka Town Council through Letters of Allotment reference numbers 50861/III/51 and 5086/11/52.

6. PW1 further stated that pursuant to the allotment letters, the Plaintiff was to acquire the suit properties at a standard premium of KShs 8,200 payable once and an annual rent of KShs 1,640 for the Plot 137 and standard premium of KShs 7,600 with an annual rent of KShs 1,520 for Plot 138. He added that the Plaintiff had been complying with conditions by paying annual rent to the First Defendant and had been following up with the Ministry of Lands and Physical Planning to be registered as owner. That the Plaintiff obtained from the said ministry letters dated 2nd November 2016 and 24th November 2016 addressed to the Third Defendant to effect the registration.
7. PW1 also stated that in view of the chronology, the Plaintiff was the lawful proprietor of the suit properties to the exclusion of all and sundry including the Defendants. That in June 2020, the First Defendant trespassed on the suit properties at night through its agents, servants and/or employees and proceeded to demolish developments including a timber yard and a store that had been constructed by the Plaintiff. That the Plaintiff did not receive any notice from the First Defendant prior to the demolition and that the Plaintiff reported the demolitions at Keroka Police station under OB number 46/8/6/2020 on 8th June 2020.
8. He further stated that after the demolitions, the First and Fifth Defendants commenced new developments on the suit properties in total disregard of the Plaintiff's proprietary rights

and that the First Defendant used its position to illegally bulldoze their way and use county resources to construct the illegal developments. He added that the Fifth Defendant was behind the fraudulent scheme and had indicated in the illegal public toilets that have been constructed that they were financed by his office and the First Defendant. That the First and Fifth Defendants' actions had violated the Plaintiff's constitutional rights of the Plaintiff and had caused the Plaintiff huge financial losses.

9. PW1 went on to testify that the demolishing vehicles belonged to "GK" and did not bear the name of the First Defendant although uniformed personnel from the First Defendant were present. He added that the Plaintiff met all the conditions of the allotment but was yet to be given certificates of lease. That the Seventh Defendant was elected to office in 2022 and was not the area Member of County Assembly on 8th June 2020. He added that the Seventh Defendant had never laid claim over the suit properties and that he did not know who wrote his name on the bill boards.

10. The Plaintiff's case was then closed.

11. Josphat Motanya Gori (DW1), the First Defendant's Chief Officer in charge of Lands Housing, Physical Planning and Urban Development stated that he was appointed in November 2022. He adopted his witness statement dated 23rd September 2024 and stated that parcel number E/K Mwamangera/1128 was public land belonging to the First

Defendant. That no application for a lease in respect of the parcel had been made by the Plaintiff or any person.

12. He further stated that the allotment letters in respect of Plot numbers 43 and 44 were issued by Keroka Town Council and that the plots were later renamed/amended to read Plot Numbers 138 and 137 but the First Defendant's records do not show when the amendment was done. That renaming or renumbering is usually done when one applies for a lease but in this case, the procedure for re-numbering was not followed. He later stated that there had been no amendment and that his earlier mention of amendment was in reference to the Plaintiff's position. He also stated that the First Defendant did not have the properties that the Plaintiff was referring to and did not know where they were located.

13. DW1 also testified that the First Defendant did not carry out the alleged demolition and that he could not recall if there was any other construction besides a boda boda shed which was complete. He added that the First Defendant did not usually register land but only issued allotment cards signed by the County Executive Committee Member (CECM). That parcel number E/K Mwamangera/1128 was public land which birthed the suit properties and the other plots. That parts of parcel number E/K Mwamangera/1128 were occupied by persons who have been authorized by the First Defendant while other parts were unoccupied. He added that he did not know whether the suit properties had been surveyed and that he had not seen

any lease document, beacon certificate or receipt for land rates in respect of the suit properties.

14.The First Defendant's case was then closed.

15.The Second to Sixth Defendant's case was closed without any witness being called.

16.Emmanuel Nyambega Gisesa (DW2) testified next and stated that he was Member of County Assembly of Rigoma Ward where the suit properties are located. He adopted his witness statement dated 3rd October 2024 and stated that he had no official or personal interest in the suit properties and had never instructed anybody to destroy or construct anything therein. That the public toilets and other amenities depicted in photographs which the Plaintiff availed were constructed by the First Defendant around 2019 to 2021 before he was elected to office.

17.He added that he had been to the suit properties but could not confirm if the toilets were on the suit properties. He added that the toilets were built in the market but could not confirm whether suit properties were public land or private land. That he did not build or demolish anything and that his name was on the project as part of a standard procedure within the County.

18.The Seventh Defendant's case was then closed.

19.Directions were thereafter given that parties file and exchange written submissions. The Plaintiff filed submissions dated 2nd

February 2026 while the First Defendant filed submissions dated 12th February 2026. The Second to Sixth Defendants did not file any submissions, opting instead to rely on evidence on record. The Seventh Defendant also did not file any submissions.

20. I have carefully considered the pleadings, the evidence and the submissions. The issues that arise for determination are whether the Plaintiff is the owner of the suit properties and whether the reliefs sought should issue.

21. The Plaintiff's case is that it has letters of allotment in respect of the suit properties. It produced letters of allotment dated 5th February 1997. The letters are in respect of Uns. Plot No. 43 - Keroka and Uns. Plot No. 44 - Keroka. I note that only the first page of each of the letters of allotment was produced. The pages bearing the name and signature of the issuing officer are missing.

22. A letter of allotment is not title to land. It is merely an offer on specified terms and conditions. The allottee has to follow it up, comply with all the conditions of the offer as well as the procedure for obtaining title to public land before it gets a valid title document. See **Wreck Motor Enterprises v Commissioner of Lands & 3 others [1997] eKLR**.

23. The Supreme Court affirmed that position in **Torino Enterprises Limited v Attorney General (Petition 5 (E006) of 2022) [2023] KESC 79 (KLR) (22 September 2023) (Judgment)** where it held:

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 Moiyo 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”

24. In the subsequent decision in **Sehmi & another v Tarabana Company Limited & 5 others (Petition E033 of 2023) [2025] KESC 21 (KLR) (11 April 2025) (Judgment)**, the Supreme Court restated the position that an allotment that is neither legal nor regular cannot create a valid title and that courts cannot shut their eyes to irregularities attendant to an allocation of public land.

25. The Plaintiff conceded that no title has been issued to it in respect of the suit properties so far. By relying on the letters of allotment, the Plaintiff is in essence admitting that the suit properties are public land which was in the process of being

converted to private land in its favour. The conversion is incomplete as long as no title has been issued to the Plaintiff.

26. Among the reliefs that the Plaintiff is seeking are an order compelling the Second Defendant to register it as proprietor of the suit properties, vacant possession of the suit properties and a permanent injunction restraining the First and Seventh Defendants from encroaching on or interfering with the suit properties. It is effectively claiming proprietorship.

27. As of 5th February 1997 when the letters of allotment were issued, there was a known procedure for conversion of unalienated public land to private land under the **Government Lands Act** (repealed). **Section 9** of the Act gave the Commissioner of Lands power of disposal of land within townships by providing as follows:

The Commissioner may cause any portion of a township which is not required for public purposes to be divided into plots suitable for the erection of buildings for business or residential purposes, and such plots may from time to time be disposed of in the prescribed manner.

28. Courts have severally rendered themselves on how the process of allocation of public land to private persons and issuance of title to them was to take place. Suffice it to cite **Dina Management Limited v County Government of Mombasa & 5 others [2023] KESC 30 (KLR)** where the Supreme Court held thus:

104. The procedure for the allocation of unalienated land is laid out by the Environment and Land Court in Nelson Kazungu Chai & 9 others v Pwani University [2014] eKLR as follows: "...It is trite law that under the repealed Government Lands Act, a Part Development Plan must be drawn and approved by the Commissioner of Lands or the Minister for lands before any un-alienated Government land could be allocated. After a Part Development Plan (PDP) has been drawn, a letter of allotment based on the approved PDP is then issued to the allottees.

131. It is only after the issuance of the letter of allotment, and the compliance of the terms therein, that a cadastral survey can be conducted for the purpose of issuance of a certificate of lease. This procedural requirement was confirmed by the surveyor, PW3. The process was also reinstated in the case of African Line Transport Co Ltd v Attorney General, Mombasa HCCC No 276 of 2013 where Njagi J held as follows: "Secondly, all the defence witnesses were unanimous that in the normal course of events, planning comes first, then surveying follows. A letter of allotment is invariably accompanied by a PDP with a definite

number. These are then taken to the department of survey, who undertake the surveying. Once the surveying is complete, it is then referred to the Director of Surveys for authentication and approval. Thereafter, a land reference number is issued in respect of the plot 132. A part development plan (PDP) can only be prepared in respect to Government land that has not been alienated or surveyed...”

105.This process is restated in African Line Transport Co Ltd v Attorney General, Mombasa, HCCC No 276 of 2003 [2007] eKLR where it was held that planning comes first, then surveying. A letter of allotment is invariably accompanied by a PDP with a definite number, which would then be taken to the Department of Survey for surveying. Thereafter, it is then referred to the Director of Surveys for authentication and approval. It is after that process that a land reference number is issued in respect of the plot.

29.The letter of allotment in respect of Uns. Plot No. 43 – Keroka stated that the Plaintiff was to accept the offer and pay a total of KShs 16,344 by banker’s cheque within thirty days of the date of the letter. Similarly, the letter of allotment in respect of Uns. Plot No. 44 – Keroka stated that the Plaintiff was to accept

the offer and pay a total of KShs 15,554 by banker's cheque within thirty days of the date of the letter. The Plaintiff did not produce any letter of acceptance and banker's cheque that complies with the terms of the offers. I have also not seen any receipt in the Plaintiff's name, in respect of the amounts.

30. The Plaintiff has placed heavy reliance on letters dated 2nd November 2016 and 24th November 2016, from the Ministry of Lands and Physical Planning, to support its claim that leases were issued. I note however that no lease or evidence of payment of registration fees in respect thereof was produced. The letters were copied to the Plaintiff with instructions to appear before the Land Registrar to execute and collect leases.

31. The Plaintiff offered no evidence as to whether it appeared before the Land Registrar and if so, what transpired. The letters also instructed the Plaintiff to pay all outstanding land rent, and present payment slips to the Land Registrar. The Plaintiff did not produce even a single payment receipt in respect of the rent.

32. I further note that in letters dated 3rd July 2013 and 4th July 2013, the Director of Survey persistently urged the National Land Commission to verify authenticity of allocation documents registration. All the foregoing leaves me with grave doubt as to authenticity of the letters dated 2nd November 2016 and 24th November 2016.

- 33.If the Plaintiff wanted to establish the veracity of the letters dated 2nd November 2016 and 24th November 2016, nothing would have been easier than calling officers from National Land Commission and the land registry to testify on its behalf and vouch for the letters. The Plaintiff was well aware that the Second to Sixth Defendants neither filed a defence nor compliance documents and were therefore set not to offer any testimony.
- 34.Since the Plaintiff is claiming title to land, it must have been aware that it could only succeed on the strength of its case by producing all the required supporting documents, and not on perceived weakness or even absence of defence. See **Chief Land Registrar & 4 others v Nathan Tirop Koech & 4 others [2018] eKLR**. I find and hold that the Plaintiff has not proven ownership of the suit properties.
- 35.The Plaintiff contended that the First Defendant demolished its developments on the suit properties including a timber yard and a store. In the absence of proof of ownership of the suit properties, the Plaintiff's claim of right to have developments on the suit properties has no foundation. Further, the Plaintiff did not produce any approved building plans and permits as proof of construction.
- 36.While it relied on a valuation report dated 13th March 2024, I note that the valuers stated in the report that they inspected the suit properties on 15th February 2024, which is almost four years after the date of the alleged demolition. They did not

identify any development by the Plaintiff and focused on the value of the land.

37.As I have found above, the Plaintiff has not established ownership of the suit properties. It follows therefore that the Plaintiff is not entitled to the reliefs that it seeks.

38.In view of the foregoing discourse, I find no merit in the Plaintiff's case. I dismiss it with costs to the First and Seventh Defendants. I do not award any costs to the Second to Sixth Defendants since they did not file any defence or submissions.

Dated, signed, and delivered at Nyamira, this 15th day of April 2026.

**D. O. OHUNGO
JUDGE**

Delivered in the presence of:

Mr Orina for the Plaintiff

Ms Moeche for the 1st Defendant

No appearance for the 2nd to 6th Defendants

Mr Oira for the 7th Defendant

Court Assistant: B Kerubo