Mwaura v Nairobi City County Government & 2 others (Environment and Land Case 71 of 2020) [2026] KEELC 1983 (KLR) (9 April 2026) (Judgment)

Neutral citation: [2026] KEELC 1983 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ENVIRONMENT AND LAND CASE 71 OF 2020

CG MBOGO, J

APRIL 9, 2026

BETWEEN

NAHASHON MWANGI MWAURA ..... PLAINTIFF

AND

NAIROBI CITY COUNTY GOVERNMENT ..... 1ST DEFENDANT

NAIROBI CITY COUNTY INSPECTORATE SERVICE ..... 2ND DEFENDANT

MUKAB HOMES LIMITED ..... 3RD DEFENDANT

JUDGMENT

1. The plaintiff filed the further amended plaint dated 7th December 2021 seeking that judgment be entered against the defendants jointly and severally for:-

    a. A declaration that the plaintiff has been the allotee of all that property known as plot no. 1962 Eastleigh Section VII Timboroa Street is the lawful owner.

    b. Special damages of Kshs.60,000,000/= being the market value of the suit property based on market value of similar properties in the zone.

    c. General damages for distress, pain and sufferings-Kshs.50,000,000/=.

    d. Aggravated damages and exemplary damages of Kshs.20,000,000/=.

    e. In the alternative to b, c and d above, compensatory damages on the basis of full repayment value of the suit property herein as developed by the plaintiff prior to the demolition thereof on 6th May 2020, together with unencumbered open market value of the suit property as at the time of judgment herein in the aggregated sum of Kshs.150,000,000/=.

    f. Interest on b, c and d above at the rate of 12% from the date of judgment until payment in full.

g. Costs of the suit.

2. The gist of the suit is that the plaintiff has at all material times, since 12th December, 1963 been the registered proprietor of plot no. 1962 Eastleigh Section VII Timboroa Street, the suit property which is served by a service lane/public road that terminates at the suit property hence a cul de sac. The plaintiff further pleaded that through account code 1-2502 maintained with the 1st defendant, he paid the annual ground rent in respect of the suit property, and that the same is only accessible from Timboroa Street through a public road between plot no. 325 belonging to the 3rd defendant and 329 as per the part development plan issued by the defunct City Council of Nairobi.

3. The plaintiff pleaded that on 6th May, 2020, a gang of unknown people trespassed on the suit property causing damage and demolished his residence as well as the structures thereon. Further, that during the destruction, he confronted a gentleman who appeared to command the illegal operation by the name of William Kagongo, the deputy county chief commandant of the 2nd defendant who ignored him but violently mishandled him.

4. The plaintiff pleaded that on 7th May, 2020, the 3rd defendant extended a brick and iron sheet wall on his property thus blocking him from accessing his property and further extended his development to the barricaded area which is the service lane and the suit property. He pleaded that the demolition of his property was done to benefit the 3rd defendant who was aided by the 1st and 2nd defendants as soon thereafter, the 3rd defendant took possession of the service lane and the suit property.

5. That while the 3rd defendant remained faceless, he came to fore when the mandatory National Construction Authority sign board was erected on its property (3rd defendant's) and he confirmed that he continues to interfere with the service lane by purporting to construct a sewer line on the suit property and the service lane.

6. The plaintiff pleaded trespass, deprivation of the use of the suit property which he has suffered loss and damage.

7. The 1st and 2nd defendants filed their statement of defence dated 9th April, 2021. They denied the contents of the plaint and stated that what the plaintiff claims is an access road and not a plot. Further, it is their responsibility to put order and sanity in Nairobi. They pleaded that the plaintiff trespassed on the alleged suit property which is an access road and cannot be compensated for the wrong actions.

8. The 1st and 2nd defendants stated that the remedy for injunction is not available to the plaintiff since the access road should be open to the public and not limited to the plaintiff.

9. The 3rd defendant filed its defence dated 14th June, 2021. While denying the contents of the plaint, the 3rd defendant pleaded that it did not send anyone to cause damage or conduct demolitions, yet the plaintiff is aware that the said demolitions were conducted by lawful authorities. Further, that the 1st and 2nd defendants are local authorities that do not respond to a private company. The 3rd defendant pleaded that it did not barricade the public service lane, and neither did it extend its development to the said lane. Further, that the service lane is unobstructed as the fence erected demarcates its property and there is a clear walkway.

10. The 3rd defendant pleaded that the plaintiff's claims are unfounded and baseless and while there is contention on the obstruction, the plaintiff further claims that the construction is on its property. The 3rd defendant stated that the part development plan relied on by the plaintiff shows that their respective properties are not adjacent to each other. It was pleaded that the plaintiff is using this court to write an

illegality by sanitizing illegal grabbing of a property that has been demarcated for public use. Further, that the plaintiff has failed to prove any link between the demolition and its use of its own property.

11. The plaintiff's case proceeded for hearing on 23rd April, 2025. Nahashon Mwangi Mwaura (PW1) adopted his witness statements dated 18th May, 2021 and 25th July, 2022 as his evidence in chief. He produced the documents contained in the list dated 18th May, 2021 as P. Exhibits nos. 1 to 15 respectively. He informed the court that he resides in Section 7 in Eastleigh.

12. On cross examination, PW1 testified that he occupied the suit property in 1963 and that he has constructed a house which he completed in the year 2012. It was his testimony that he commenced construction in the year 1963, and that by the time he got the letter of allotment dated 25th February, 1997, he had already constructed a building. Further, he stated that the allotment letter is for residential occupation, and that he conducts business on the same. PW1 did not have the approval plan for the construction but produced the part development plan showing his property. He disagreed that the suit property-plot no. 1962 is reserved for the road. He stated that the part development plan is signed by the city council, and that he has not trespassed into an area meant for the road.

13. On further cross examination, PW1 informed the court that while he has no title to the suit property, the letter of allotment is sufficient. Further, that he did not know if the directors of the 3rd defendant and the employees of the 1st and 2nd defendants were present when the property was demolished. He stated that plot no. 325 belongs to the 3rd defendant and does not touch on his property. PW1 testified that he was allocated the plot by the 1st defendant, and that all the other plots as shown to him begin with no. 33. It was further his testimony that the 3rd defendant fenced off his plot and hired people to demolish the same. He stated that he witnessed the demolition taking place together with other neighbours who were at the scene. PW1 did not produce photographs to show his house before it was demolished.

14. The defendants' case proceeded for hearing on 28th July, 2025. Geoffrey Cheruiyot (DW1) introduced himself as the county surveyor of the 1st defendant. He adopted his witness statements dated 9th April, 2021 as his evidence in chief. He produced the list of documents dated 29th April, 2021 being the survey plan number FR No. 64/33 as D. exhibit number 1. He testified that what the plaintiff's claim as his property is a public road, and the survey plan FR 64/33 S dated 26th June, 1952 shows that by 1952, the place was reserved as a public road to serve the adjoining plots. According to DW1, there have been no amendments or valuation to the survey plan ever since it was prepared. Further, that the plaintiff's allotment letter dated 25th February, 1997 has a number inserted by hand reading 1962.

15. DW1 further testified that the part development plan produced by the plaintiff is not signed by any officer of the then city council and neither has it been signed by the commissioner of lands. Further, that the business payment from the 1st defendant dated 1st January, 2020 is an approval for the plaintiff to conduct business but it does not tally with the letter of allotment.

16. On cross examination, DW1 was not sure whether the 3rd defendant ordered the 1st defendant to demolish the suit property as it does not take directives from third parties.

17. On further cross examination, DW1 testified that the map produced is for the year 1952, and having visited Timboroa street, he is certain that the suit property is a public road which runs to plots nos. 330 and 332. It was also his testimony that the garages which were demolished were also on the road. He stated that plots no. 330,332 and 339 are still in place and disagreed with the plaintiff that he still resides on the plot. It was further the testimony of DW1 that they use the 1952 survey plan for the area which has not been amended, and that it is genuine. He stated that the defendants did not allocate the suit property, and he was not aware that the suit property was taken away by the 3rd defendant.

18. On re-examination, DW1 stated that he has never seen the plaintiff's plot, and that he does not know where the copies of the rates payments were issued.

19. On 13th November, 2025, Abdiraham Abdi Aidid (DW2) introduced himself as the director of the 3rd defendant. He adopted his witness statement dated 25th October, 2023 as his evidence in chief. He produced the documents contained in the list of documents dated 14th June, 2021 as D. Exhibits nos. 2 to 9 respectively. He testified that there has never been a dispute over his ownership of LR 36/VII/325 and that it does not border with what the plaintiff claims to be his land. It was also his testimony that he did not send goons to demolish the plaintiff's property, and he built a wall around his property to keep off trespassers.

20. On cross examination, DW2 testified that he has resided on his property for seven years, and that there was a house when he purchased the same sometime between 2018 and 2019. He further stated that he demolished the house in 2019 after purchasing the property and that there were other plots in the neighbourhood. He stated that their property plot no. 325 faces General Waruinge street which they use for access.

21. DW3 could not recall the case filed by the plaintiff against the 3rd defendant over a parcel of land, and the meeting that was held at international life house. He denied using the police to stand guard as the 3rd defendant demolished the plaintiff's property. He also denied trespassing on the wayleave and onto another property. With the testimony of DW3, the 3rd defendant rested its case.

22. The plaintiff filed his written submissions dated 17th November, 2025. The 1st and 2nd defendants filed their written submissions dated 16th December, 2025. The 3rd defendant filed its written submissions dated 13th January, 2026.

23. The court has considered the pleadings, evidence tendered and the written submissions filed. In my view, the issues for determination are as follows:-

    a. Whether the plaintiff is the lawful allottee of plot no. 1962.

    b. Whether the plaintiff is entitled to the orders sought.

    c. Who is to bear costs.

24. The plaintiff contended that he is the owner of the suit property having occupied the same since the year 1963. He stated that he was issued with an allotment letter on 25th February, 1997 and completed construction in 2012. That during this time, he has been in living thereon together with his family until sometime in 2020 when the defendants demolished the property particularly blocking access which is on Timboroa street. In support thereof, the plaintiff relied on and produced the unsigned part development plan, receipts, letter of allotment, and the valuation report. On the other hand, the 1st and 2nd defendants maintained that the plaintiff's alleged plot is an access road, and thus he cannot be compensated for wrong actions. During cross-examination of DW1, the 1st and 2nd defendants stated that the plaintiff's allotment letter is not genuine owing to the plot allocation numbers within the area.

25. Additionally, and based on the survey plan of 1952, DW1 went on to state that the suit property is an access road which should be open to the public and not limited to the defendant. While being accused of masterminding the alleged demolitions, the 3rd defendant stated that it has not obstructed any access road, and that neither did it cause the demolitions on the plaintiff's property. In determining whether

the plaintiff is the lawful allottee of the suit property, it is trite law that he who alleges must prove. Section 107 of the *Evidence Act* provides as follows:-

> "(1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.
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> (2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person."

26. Allocation of land through letters of allotment has been found to be inconclusive. In other words, it does not confer absolute ownership of a claim of an interest in land. See the case of Shadrack Kuria Kimani vs Stephen Gitau Nganga & another [2017] eKLR. The Supreme Court in the case of Torino Enterprises Limited v Attorney General (Petition No 5 (E006) of 2022) [2023] KESC 79 (KLR) (22 September 2023) (Judgment) stated that:-

> "It is settled law that an allotment letter is incapable of conferring interest in land, being nothing than an offer, awaiting the fulfilment of conditions stipulated therein. In Dr. Joseph N. K. Arap Ng'ok v Justice Moijo Ole Keiyua & 4 others C.A 60 of 1997 (unreported) and in Gladys Wanjiru Ngancha v Teresa Chepsaat & 4 others High Court Civil Case No 182 of 1992 [2008] eKLR, the superior courts restated this principle..."

27. In this case, the plaintiff produced a copy of the letter of allotment dated 25th February, 1997. This letter of allotment contained conditions that were to be met. Strictly, and in compliance with the said terms, the plaintiff was required to make payment within 30 days. From the record, it appears that there was no compliance with these terms. Instead, the plaintiff made payments three years later on 22nd May, 2001. The annual rent payments are inconsistent. Since paying the initial sum of Kshs.20,000/- in 2001, there has been no other payment until sometime in the years 2012, 2013, 2014 and 2020. In Philma Farm Produce & Supplies & 4 others v Attorney General & 6 others [2012] eKLR, it was held that:-

> "These letters do not confer a proprietary right but only a right to receive property or to be allocated on complying with the terms and conditions stated therein. The right to be allocated the property is a contractual right and must be determined in accordance with the ordinary rules of contract. It is in this respect that the petitioner claim must fail."

28. Besides the inconsistency in payments, the 1st and 2nd defendants argued that the suit property is an access road which was not available for use as a residential property. They also raised doubts as to the plot number allocation which differed from the rest of the plots within the section.

29. Section 109 of the same Act states as follows:-

> "The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person."

30. In proving that indeed he is the lawful owner of the suit property, the plaintiff did not lead any evidence as to how he acquired the suit property. He alleged that he has been living on the plot since 1963. The part development plan is not signed, and one cannot tell whether it is reliable. The suit property also appears to be on what is an access road as per the survey plan produced by the 1st and 2nd defendants. If say for example that the plaintiff was allocated the suit property, how then does the owner of plot no.

330 access his property? In the case of Ali Mohamed Dagane (Granted Power of Attorney by Abdullahi Muhumed Dagane,suing on behalf of the Estate of Mohamed Haji Dagane) versus Hakar Abshir & 3 others [2021] eKLR, the following observations were made which I find relevant to this case:-

> " This court in the case of Mako Abdi Dolal v Ali Duane & 2 others [2019] eKLR noted that prior to the promulgation of the 2010 Constitution and the 2012 amendments to the body of Land Laws in Kenya, disposition of government land was governed by the Government Lands Act (Repealed). Section 4 of the Act provided as follows:-
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> "All conveyances, leases and licenses of or for the occupation of Government Lands, and all proceedings, notices and documents neither this Act, made, taken, issued or drawn, shall serve as otherwise provided, be deemed to be made, taken, issued or drawn under and subject to the provisions of this Act."
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> Power to dispose of public land was vested in two entities: The President and the Commissioner of Lands, under Sections 3 and 9 respectively. The process of the disposition of government land followed the following procedure: First, the respective municipal council in which the land to be disposed was situate had the mandate of advising the Commissioner of Lands on which portions of land could be disposed. This step would have required the responsible council to visit the area or to carry out a fact-finding mission to satisfy itself that the land was first of all government land and second that it was indeed available for disposition. See Harison Mwangi Nyota v Naivasha Municipal Council & 20 others [2019] eKLR,
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> "...The question that the plaintiff seemed to raise is what role the Municipal Council of Naivasha had in the issuance of allotment letters to the defendants in 1992. According to DW1, an employee of the 1st defendant, the local authority (1st defendant) has to recommend that the land is available for allocation before an allotment letter can issue. DW13 also told the court that the Council oversees all developments in its jurisdiction and allocates land on advisory basis for the Commissioner. It seems that even if the 1st defendant issued the letters dated 1/12/1992, it was mere advisory to the Commissioner of Lands. The allotment of the land had to be ratified by the Commissioner for Lands. It is obvious even from the communication between the Municipal Council and the Office of the Commissioner of Lands that the Council played an important role in identifying what land was available for purposes of alienation."
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> The second step would be for the part development plan to be drawn up and approved by the Commissioner of Lands. See Nelson Kazungu Chai & 9 Others vs. Pwani University College (2014) eKLR,
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> "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 of Lands before any unalienated Government land could be allocated. After a Part Development Plan (PDP) has been drawn, a letter of allotment based on the approved Part Development Plan is then issued to the allottee."
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> The third step involved the determination of certain matters by the Commissioner of lands which matters are listed under Section 11 of the Government Lands Act (Repealed). The matters to be determined include the upset price at which the lease of the plot would be sold, the conditions to be inserted into the lease; the determination of any attaching special covenants and the period into which the term is to be divided and the annual rent payable in respect of each period.

The fourth step would be for the gazettement of the plots to be sold, at least four weeks prior to the sale of the plots by auction under Section 13 of the Government Lands Act (Repealed). The notice was required to indicate the number of plots situate in an area; the upset price in respect of every plot; the term of the lease and rent payable, building conditions and any attaching special covenants.

The fifth step would be for the sale of the plots by public auction to the highest bidder. Section 15 of the Government Lands Act (Repealed).

The sixth step would be for the issuance of an allotment letter to the allotee. An allotment letter has been held not to be capable of conferring an interest in land, being nothing more than an offer, awaiting the fulfilment of the conditions stipulated therein by the offeree. See the decisions in: Gladys Wanjiru Ngacha v Teresa Chepsaat & 4 others 182/1992 (Nyeri); and in Dr. Joseph N.K. Arap Ng'ok v Justice Moijo Ole Keiyua & 4 others C.A.60/1997 where the Court of Appeal held as follows:-

"It has been held severally that a letter of allotment per se is nothing but invitation to treat. It does not constitute a contract between the offerer and the offeree and does not confer interest in land at all. It cannot thus be used to defeat a title of a person who is the registered proprietor of the said parcel of land."

In order for an allotment letter to become operative, the allotee was required to comply with the conditions set out therein including the payment of stand premium and ground rent within the prescribed period. See the decision in: Mbau Saw Mills Ltd v Attorney General for and on behalf of the Commissioner of Lands) & 2 others [2014] eKLR,

"I have considered the evidence on record and the submission of the parties and do find that a letter of allotment was issued to Mr. Joseph K. Mugambi on 21/10/1971 with a condition to accept the offer within 30 days. He did not do so and thereafter the offer lapsed 30 days after it was made in accordance with the allotment letter. Having failed to accept the offer as stipulated in the letter of allotment Mr. J.K. Mugambi did not acquire interest in the unsurveyed lorry depot and therefore had no interest to transfer to the plaintiff. This court holds that a letter of allotment does not confer any property rights to a person unless there is acceptance and payment of the stand premium and ground rent. In the letter dated 17/6/1988 which was written about 17 years after the allotment letter was issued, the Commissioner of Lands confirmed that the plot was allocated to Joseph M. Mugambi in 1971 for lorry depot. However, the plot had neither been paid for nor an acceptance of the offer in the allotment letter made. The implication of this letter was that the allottee had not complied with the terms of the allotment letter and therefore the offer had lapsed. The offer having lapsed, the allottee Mr. Joseph M. Mugambi did not have any interest to transfer to the plaintiff and therefore all transactions between the allottee and the plaintiff were a nullity in law."

The allotment letter also must have attached to it a part development plan (PDP). See the decision in African Line Transport Co. Ltd Vs The Hon .AG, 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."

And again, in Nelson Kazungu Chai & 9 Others vs. Pwani University College (2014) eKLR,

"Worth noting as well is that no Part Development Plan was produced to back the Appellants' claim that due process had been followed as alleged."

The seventh step, which comes after the allotee has complied with the conditions set out in the allotment letter is the cadastral survey, its authentication and approval by the Director of Surveys and the issuance of a beacon certificate. The survey process precipitates the issuance of land reference numbers and finally the issuance of a certificate of lease. Nelson Kazungu Chai & 9 Others vs. Pwani University College (2014) eKLR the court held as follows:-

'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 survey was confirmed by the Surveyor, PW3. The process was also reinstated in the case of African Line Transport Co. Ltd Vs The Hon .AG, 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.

31. In relying on the principles cited in the above authority, I am not convinced that the plaintiff is the lawful holder of the suit property.

32. The plaintiff sought special damages, general damages and aggravated damages. The valuation report produced was prepared after the demolitions took place and it is difficult to assess the damages if at all there was any. The plaintiff did not provide evidence of the bungalow he said to have finished construction in 2012, and any books of accounts or any other document in support thereof. In the case of Capital Fish Kenya Limited v The Kenya Power & Lighting Company Limited [2016] KECA 56 (KLR), the Court of Appeal stated inter alia:-

> " ... it is trite law that special damages must not only be specifically pleaded, they must also be strictly proved with as much particularity as circumstances permit."

33. The Court of Appeal in Mumbi M'Nabea vs David M. Wachira [2016] eKLR stated as follows:-

> " In our jurisdiction, the standard of proof in civil liability claims is that of the balance of probabilities. This means that the Court will assess the oral, documentary and real evidence advanced by each party and decide which case is more probable. To put it another way, on the evidence, which occurrence of the event was more likely to happen than not."

34. Let me say that it was upon the plaintiff to prove his case on a balance of probabilities to the extent that the court would be persuaded that he is deserving of the orders sought. He failed on this front by supplying insufficient material to support his arguments. In my analysis, and having carefully considered the evidence by the parties, I am not satisfied that the plaintiff is deserving of the orders sought.

35. From the above, the further amended plaint dated 7th December, 2021 lacks merit, and it is hereby dismissed with costs to the defendants.

It is so ordered.

DATED, SIGNED & DELIVERED VIRTUALLY THIS 9TH DAY OF APRIL, 2026.

HON. MBOGO C.G.

JUDGE

09/04/2026.

In the presence of:

Ms. Benson Arunga - Court assistant

Mr. Mohamed for the 3rd Defendant

Mr. Otenyo for the 1st and 2nd Defendant