



**Njoroge & 5 others v Langata KPA Nairobi West Self-Help Group & 4 others (Environment and Land Case E203 of 2023) [2026] KEELC 2030 (KLR) (13 April 2026) (Judgment)**

Neutral citation: [2026] KEELC 2030 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND CASE E203 OF 2023**

**MN KULLOW, J  
APRIL 13, 2026**

**BETWEEN**

**MOSES NJOROGE ..... 1<sup>ST</sup> PLAINTIFF  
ROSE WATHIHA NJOROGE ..... 2<sup>ND</sup> PLAINTIFF  
LUCINA MUTHONI MURIITHI ..... 3<sup>RD</sup> PLAINTIFF  
ABDULKADIR HASHIM BIN SHAYKH ABUBAKAR ..... 4<sup>TH</sup> PLAINTIFF  
FARID FARAJ AWADH BAMAFTAH ..... 5<sup>TH</sup> PLAINTIFF  
MALIHA HASHIM ABDULKADIR ..... 6<sup>TH</sup> PLAINTIFF**

**AND**

**LANGATA KPA NAIROBI WEST SELF-HELP GROUP ..... 1<sup>ST</sup> DEFENDANT  
LANGATA KPA NAIROBI WEST SELF-HELP GROUP ..... 2<sup>ND</sup> DEFENDANT  
JOHN OCHIENG OCHOLA ..... 3<sup>RD</sup> DEFENDANT  
LYDIA AKOTH ..... 4<sup>TH</sup> DEFENDANT  
DOUGLAS OWINO ..... 5<sup>TH</sup> DEFENDANT**

**JUDGMENT**

**Background**

1. This matter is in relation to Land parcel known 209/10635 herein referred to as the suit property. The applicant has brought this via a plaint date 5<sup>th</sup> June 2023 seeking the following orders
  - a. A declaration that the Plaintiffs are the legitimate owners of the Suit plots.



- b. An order for Specific Performance mandating the Defendants to process the titles in favour of the Plaintiffs.
- c. An order of injunction do issue a temporary restraining the Defendants jointly and severally from processing, releasing, disposing, charging, and/or transferring to any other party other than the Plaintiffs the property known as LR No. 209/10636 and/or interfering with any records relating thereto.
- d. In the alternative and without prejudice to prayers (a), (b) and (c), a declaration be made that the Defendant do transfer an equivalent plot in measurements which is an adjacent property to the suit property, known as LR No. 209/10636 to the Plaintiffs in place of the suit property.
- e. In the alternative and without prejudice to prayers (a), (b), (c) and (d), the Plaintiffs be awarded compensation at the market value of suit properties;
  - i. Plot 1 Kenya Shillings 4,000,000/-
  - ii. Plot 2 Kenya Shillings 4,000,000/-
  - iii. Plot 3 Kenya Shillings 4,000,000/-
  - iv. Plot 4 Kenya Shillings 4,000,000/-
  - v. Plot 5 Kenya Shillings 4,000,000/-
  - vi. Plot 6 Kenya Shillings 4,500,000/-
  - vii. Plot 7 Kenya Shillings 4,100,000/- Plot 8 Kenya Shillings 4,000,000/- 32,600,000/-
- f. Specific damages to the plaintiffs as per the below breakdown:
  - i. A total of Kenya Shillings 7,035,940/- to the 1<sup>st</sup> Plaintiff being payment for loss resulting from the demolition of his gate and perimeter wall which costed Kenya Shillings 350,000/-, Kenya shillings 85,940 for payment of survey and conveyance fee for Plot No.1 and loss of monthly Rental Income of Kshs. 50,000/- effective 1st May 2012.
  - ii. A total of Kenya Shillings 435,940/- to the 2<sup>nd</sup> Plaintiff being payment for loss resulting from the demolition of her gate and perimeter wall Kenya Shillings 350,000/- and Kenya shillings 85,940/- for payment of survey and conveyance fee for Plot No.2.
  - iii. Kenya shillings 85,940 to the 3<sup>rd</sup> Plaintiff for payment of survey and conveyance fee for Plot No.3.
  - iv. Kenya shillings 116,150/- to the 4<sup>th</sup> Plaintiff for payment of excavation expenses for Plot No.5.
  - v. Kenya shillings 300,000/- to the 5<sup>th</sup> Plaintiff for payment of excavation expenses for Plots No.6 and 7.
  - vi. General damages for breach of contract.
  - vii. Cost of the suit.
  - viii. Interest on (b) and (c) above at courts rate from date of Judgement to payment in full.
  - ix. Such other relief that this court may deem fit to grant.



2. The plaintiff's case is that between 2009 and 2012 they purchased distinct plots carved out of L.R. No. 209/10635 from the Defendants, who were the duly authorized officials of the 1st Defendant. That all the Plaintiff fully paid the purchase price, received letters of allotment and/or share certificates, took possession, and carried out developments on their respective plots evidenced by payments made to the group's bank account and directly to the 4th Defendant. It was their case that despite receiving the money and allowing the Plaintiffs to develop the plots, the Defendants have denied they sold the plots part of the suit property as they had no proprietary rights to pass title to the plaintiffs. The plaintiffs are hence seeking the orders as above due to the actions of the defendants of failing to transfer title to them
3. Upon service of the Summons to Enter Appearance dated 6<sup>th</sup> July 2023 the Defendants filed a memorandum of Appearance dated 11<sup>th</sup> December 2023 a Statement of Defence dated 20<sup>th</sup> December 2023.

**Plaintiff's case.**

4. PW - 1 testified on the 26/06/2025 and he identified himself as Abdulkadir Hashim Bin Shaykh Abubakar. That he purchased plot No. 5 part of the suit property from the 3<sup>rd</sup> and 4<sup>th</sup> defendants at a value of Ksh 350,000/= and was issued with a share certificate. That he took possession of the plot same and has been enjoying quite possession of the same awaiting transfer of title in his name which transfer has never been effected despite reminders to the defendants. He relied on his bundle of documents filed on the 6<sup>th</sup> June 2023.
5. On cross examination, PW-1 indicated that there was no sale agreement that was drafted at the time of the alleged sale and that he also could not confirm if the minutes presented of 14/2/2010 were real asking members to contribute to the community development.  
On re exam PW1 indicated that he was not part of the alleged meeting neither had he been notified of the same meeting hence
6. PW-2 testified on the 28/05/2025 and identified herself as Lucina Muthoni Muriithi. She testified that she purchased plot No 3 from 3<sup>rd</sup> and 3<sup>th</sup> defendant who identified as owners of the suit property. That she paid sums of money totaling to Ksh 285,940/= and was issued with an allotment letter awaiting transfer in her name which has not been actualized.
7. On cross examination she indicated that despite not attending the meeting of 14/02/2010 of that allegedly brought forth the issue of members contributing for development purposes yet she was marked as present.  
On re exam she indicated that she had never contributed any monies to the 1<sup>st</sup> defendant
8. PW-3 Moses Njoroge also testified to purchasing plots no 1 and 4 having paid the purchase price to the 3<sup>rd</sup> and 4<sup>th</sup> defendants. Thereafter he was given an allotment later and took possession.  
He indicated that he has never made any contributions to the 1<sup>st</sup> defendant toward any developments
9. PW-4 Farid Faraj Awadh Bamaftah testified that he purchased plots No 6 and 7 having paid a consideration of Ksh 800,000/= and was issued with a share certificate for the said plots.  
On cross examination he stated that there was no sale agreement in place pointing to the purchase. He also indicated that there was no document that pointed out to the purchase price and neither was there evidence that he paid the full amount.  
On re exam he indicated that he paid the defendants directly



10. PW-5 MALIHA HASHIM ABDULKADIR relied on her witness statement dated 25/4/2025 as her evidence in chief. On cross examination she also indicated she had no sale agreement and the payment to the defendants were made on her behalf by the 4<sup>th</sup> plaintiff who is her brother.
11. The last plaintiff witness PW-5 ROSE WATHIHA NJOROGI testified on the 13/10 2025. She indicated to have purchased plot no 2 having paid the purchase price of Ksh 450,000 as purchase price to the 3<sup>rd</sup> and 4<sup>th</sup> defendants.

She pointed out during cross examination that she did not carry out a search on the property and neither did she enter into any written agreement over the same. She pointed out to the fact that she had a bank deposit but no receipt to confirm payment.

The Plaintiffs case was marked as closed.

### **The Defendant's case**

12. DW-1 LYDIA AKOTH testified on the 14/10/2025 and relied on her witness statement dated 23/5/2025 as her evidence in chief. She indicated that she with the 3<sup>rd</sup> defendant occupied the suit property with the consent of the owner and started developing on it. That other people came and settled in the property and with time, all the residents in the suit property came together and registered a self-help group that formed the 1<sup>st</sup> defendant registered as the 1<sup>st</sup> defendant.

She indicated that all the members of the 1<sup>st</sup> defendant were aware that the suit property belonged to a third party and at no point could the 1<sup>st</sup> defendant have misrepresented it to belong to the 1<sup>st</sup> defendant and hence sell it to the plaintiffs. That it was public knowledge that the property never belonged to the 1<sup>st</sup> defendant.

She indicated that the letter of allotment and share certificates did not in any way confer proprietary rights to the plaintiffs to warrant the reliefs sought.

On cross examination DW-1 indicated that the signature on the letters of allotment and the minutes of the meetings relied on purportedly for the 3<sup>rd</sup> defendant was different. She indicated she was not privy to how the plots were allocated to the plaintiffs.

On re exam she indicated that all the plaintiffs were members of the 1<sup>st</sup> defendant and hence well aware of the business of the 1<sup>st</sup> defendant

The defendant's case was marked as closed.

13. Upon the closure of the Plaintiff and Defendants case on 14/10//2025 the Honourable Court directed that parties to file written submission with respect to their case. The plaintiff filed undated submissions on the 19/11/2025 while the Defendants filed submissions dated 6/02/2026 on the 9/02/2026.

### **Plaintiff's submissions**

14. Issues raised in the submissions are as follows
  - a. Whether the Plaintiffs discharged their burden of proof and established ownership or beneficial interest in the suit property.
  - b. What elements must be proved in land transactions and whether the Plaintiffs satisfied them.
  - c. Whether the Defendants breached their contractual and fiduciary obligations.



- d. Whether the Plaintiffs' claim is competent considering it was filed jointly rather than as individual suits.
- e. Whether the inconsistency in the year of first contact (2009/2010) is material.
- f. Whether the Plaintiffs are entitled to the reliefs sought.

The plaintiff indicated that they had proved to have purchased the suit property and given rights to the same evidenced by bank slips, allotment letters and share certificates. That they had proved their evidentiary burden of proof relying on the provision of Sections 107(1) and 108 of the *Evidence Act* the case of *Mbuthia Macharia -vs- Annah Mutua Ndwiga & another* [2017] KECA 290 (KLR)

That although no sale agreement existed, the issuance of the allotment letters by the defendants signed by their officials constituted written acknowledgement of an agreement for sale. That the defendant's claim that the monies received were voluntary contributions are inconsistent with the issuance of the allotment letters and share certificates.

Counsel further argued that the defendants had breached their fiduciary and their acts of taking up the money sent to them and not honouring their obligations amounts to unjust enrichment relying on what was said in *Sumbi & another -vs- Keronya* (Environment & Land Case 306 of 2017) [2023] KEELC 20849 (KLR) (18 October 2023).

On the issue of filing a collective suit rather than individual suits counsel indicated that it was to save on the court's time since the issues raised involved the same suit property.

It was their submissions that having proved their case on a balance of probabilities, equity demands that the defendant could not retain both the land and the money that had been paid to them hence entitled to the reliefs sought of specific performance or in the alternative compensation.

### **Defendant's submissions**

#### 15. Issues raised in the submissions

- a. Whether there existed a valid and enforceable agreement for sale of land between the Plaintiffs and the Defendants;
- b. Whether the 1st Defendant ever owned L.R. No. 209/10635 or had capacity to sell or allocate plots therein;
- c. Whether the monies paid by the Plaintiffs constituted purchase price or mere member contributions;
- d. Whether the Plaintiffs proved fraud and misrepresentation to the required standard;
- e. Whether the Plaintiffs are entitled to the reliefs sought.

The defendants argued that none of the Plaintiffs ever executed a sale agreement, letter of offer, or any written instrument evidencing the alleged purchase of plots from the Defendants hence had no valid claim relying in the provisions of section 3(3) of the *Law of Contract Act* and the case law In *Nelson Kivuvani -vs- Yuda Komora & Another* Nairobi HCCC No.956 of 1991 [1995–1998] 1 EA 234,

Counsel further argued that the failure of the plaintiff to invite a crucial witness who according to them had been the reason for the meeting as between the plaintiffs and defendants and eventually led into the alleged purchases, watered down the case as the witness would have shed more light



On the issue of ownership of the property, the defendants submitted that none of the Plaintiffs conducted an official search prior to the alleged purchase as in their evidence. That nothing pointed out to the fact that the 1<sup>st</sup> defendant was at any point the owner of the suit property. Counsel further indicated the fact that the defendants had filed a counter claim in ELC 464 OF 2011 was proof enough that at no particular point had they claimed ownership as it belonged to a third party. That further the 1<sup>st</sup> Defendant being a self-help group is an unincorporated association and does not enjoy separate legal personality to enable it own land.

It was finally submitted that the Plaintiffs had failed to discharge the burden of proof placed upon them under sections 107–109 of the Evidence Act hence not entitled to the reliefs sought

### **Analysis and Determination**

16. Upon consideration of the Plaint, statement of Defence, testimonies of the witnesses, exhibits and rivalling submissions, For the Honourable Court to arrive at an informed, reasonable and Equitable decision, it has condensed the subject matter into two (3) issues for its determination. These are: -
- a. Whether the suit instituted by the Plaintiff herein through a Plaint dated 5<sup>th</sup> June 2023 has any merit or not
  - b. Whether the Plaintiff is entitled to the prayers sought.
  - c. Who will bear the costs of the suit.

### **Whether the suit instituted by the Plaintiff herein through a Plaint dated 5<sup>th</sup> June 2023 has any merit or not**

17. Firstly, the Honourable Court will endeavour to deliberate on the principles of the Law of Contract – nature, meaning and scope of Contracts and the breach of it thereof. Contracts are governed by the provisions of the “The Laws of Contract, Cap. 23”, the Land Act, No. 6 of 2012 among other Laws of Kenya. Contract is an agreement entered between one or more than one person with another or others creating an obligation for a consideration and its enforceable or recognizable in law. There are other definitions of Contract as being a promise or a set of promise, for breach of which the law gives a remedy or the performance of which the law in some way recognized as a duty. It is trite law that Courts cannot re – write contracts for parties, neither can they imply terms that were not part of the Contract. In the case of “Rufale Vs Umon Manufacturing Company (Ramsboltom) (1918) LR 1KB 592, Scrutton L. J held as follows: “The first thing is to see what the parties have expressed in the contract and then an implied term is not to be added because the court thinks it would have been reasonable to have inserted it in the contract”. In simple terms, Courts do not make contracts to parties. Courts do not even try to improve the contracts which the parties have made themselves. If the express terms are perfectly clear and ambiguity, there is no choice to be made between different meanings. The clear terms must be applied even if the court thinks some other terms could have been more suitable.
18. The validity of Contract in sale of land are provided for under the provisions of Sections 38 of the Land Act, No. 6 of 2012 which states:-Section 38 (1):- “Other than as provided by this Act or by any other written law no suit shall be brought upon a Contract for the disposition of an interest in land:-
- a. The Contract upon which the suit is founded:
    - i. Is in writing;
    - ii. Is signed by all the parties thereto;



- iii. the signature of each party signing has been attested to by a witness who was present when the contract was signed by such party.

Section 3 of the Law of Contract Act provides that:

- i. “(3) No suit shall be brought upon a contract for the disposition of an interest in land unless—The contract upon which the suit is founded—
- ii. is in writing;
- iii. is signed by all the parties thereto; and the signature of each party signing has been attested by a witness who is present when the contract was signed by such party: “The provision of Section 40 of the Land Act, No. 6 of 2012 provides for the damages from the breach of Contract. It provides: -

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- (1) “Nothing in Section 39 of the Act prevents a vendor from claiming damages and Mesne Profits from the Purchaser for the breach of a Contract of sale or for breach of any other duty to the Vendor which the Purchaser may be under independently of Contract or effects the amount of damages that the Vendor may claim.”

Any term express or implied in a contract or other instrument that conflicts with this section shall be inoperative. Further, the provision of Section 38 of the land Act.....

The Court in the case of “Nelson Kivuvani -vs- Yuda Komora & Another, Nairobi HCCC No.956 of 1991, opined as follows over an agreement for sale of land; - “The agreement for sale of land which contains the names of the parties, the number of the property, the purchase price and the conditions attached thereto, the obligations, express or implied, of each of the parties and signed and witnessed by two witnesses who signed against their names amount to a valid contract”

Having established what constitutes a contract the court will move to determine whether there was any contract as between the plaintiffs and defendants to warrant the filing of this suit by the plaintiffs. The evidence produced by the plaintiffs are allotment letters, share certificates and copies of deposit and payment slips to the defendants. The said allotment letters and share certificates have not been disputed by the defendants, the only issue raised is that they do not in any way create any legal obligations on the defendants as it is not proof of transfer of any proprietary rights

Upon cross examination of all plaintiffs, they indicated that indeed they had not entered into any sale agreement with the defendants rather claimed the allotment letters was committal on part of the defendants.

An allotment letter as has been held by the courts time and again, do not confer ownership to land, but is just a letter of offer. Indeed, a person holding an allotment letter has to prove that they have met the conditions stipulated therein to wit, paying the stand premium, rent, conveyancing fees, registration fees, stamp duty, survey fees, approval and planning fees as stated in the letter. There was no evidence tendered in this court by plaintiffs to show that upon being allocated the land, had met all the conditions stipulated in their respective letters of allotment attached in their bundle of documents therefore it cannot be said that they had proprietary interest to the plots of land merely because they had in their possession a letter of allotment



In the case of *Philma Farm Produce & Supplies & 4 others -vs- The Attorney General & 6 others* (2012) eKLR, the court held as follows: “The Petitioners’ claim is grounded on two letters of allocation of the suit properties. 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...”

Further in *Marcus Mutua Muluvi & Another -vs- Philip Tonui & Another* [2012] eKLR the court had also held as follows: “The applicants have no title to the suit premises. That being the case, I do not see the proprietary interest of their suit premises that have been infringed by the Respondent, their claim to the suit premises being anchored on letters of allotment.”

Lastly, in *Ali Mohamed Dagane (Granted Power of Attorney by Abdullahi Muhumed Dagane, suing on behalf of the Estate of Mohamed Haji Dagane) -vs- Hakar Abshir & 3 others* [2021] eKLR the court had held that: “Having evaluated in detail the necessary steps to be followed, it is emergent that a litigant basing their interest in land on the foundation of an allotment letter must provide the following proof: First, the allotment letter from the Commissioner of Lands; Secondly, and attached to the allotment letter, a part development plan; Thirdly, proof that they complied with the conditions set out in the allotment letter, primarily that the stand premium and ground rent were paid, within the specified timeline. It would also help a litigant’s case, although this may not be mandatory based on the stage of the transaction, to have a certified beacon certificate.”

From the above provisions of the law and case law it is without a doubt that an allotment letter is not a contract and does not confer any proprietary rights to a person. Since an allotment letter does not confer any proprietary right but only a right to receive property or to be allocated on complying with the terms and conditions stated therein, the plaintiffs have no claim over the suit property to warrant the orders sought. Being that there is no title document produced in their names as evidence, it cannot therefore be said that they are proprietors of the suit property and have therefore failed to prove their case on a balance of probabilities as required.

### **Whether the plaintiffs are entitled to the orders sought**

19. The issue of misrepresentation by the defendants comes into play. The Defendants are accused of fraudulently misrepresenting that the 1<sup>st</sup> defendant was the registered owner of the suit property in order to sell the suit property to the plaintiffs. The plaintiffs have allotment letters issued from the 1<sup>st</sup> defendant that seeks to confer ownership to the plaintiffs. Further there are share certificates also from the 1<sup>st</sup> defendant attributing ownership to the plaintiffs. As submitted earlier the defendants have not disputed the allotment letters and the share certificates came from them, the contention is that the two sets of documents did not confer any proprietary rights. The plaintiffs have attached receipts and bank statements to indicate that they made payments to the defendants where the defendants have come in to claim that the payment was for member contributions. This argument has not been backed up by any evidence. The 1<sup>st</sup> defendant had other members and if it is true that the monies were member contributions, the defendants should at least produce evidence of contribution by the other members or better still avail one of the members as a witness to corroborate this argument. The payment of sums of monies and the issuance of an allotment letter shows that indeed there was a form of engagement as between the parties over the suit property.

The evidence on record is that the defendants issued allotment and share certificates implying that the defendants presented themselves to be in a position to transfer title.



DW-1 stated on evidence that at not particular point was the 1<sup>st</sup> defendant the registered owner of the suit property, yet on the issuance of the letter of allotment and share certificates, the defendants were pointing out to the fact that they had transferable rights over the plots. It is not in contention that the defendants were not legally registered as the proprietors, it follows therefore that there was misrepresentation on their part as they sold the suit property which did not belong to them, they sold what they did not own. It has been settled that a party cannot give that which he does not have; therefore, the 1<sup>st</sup> Defendant could not have given title to land it did have. The same was held in the case of MWK -vs- SKK & 5 others [2018] eKLR - Murang'a ELC No 32 of 2017 where the Court held as follows: 'The 2<sup>nd</sup> Defendant did not possess a valid legal title neither did the 3<sup>rd</sup> Defendant on account of proven fraud, illegality and procedural improprieties on the part of the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, and 5<sup>th</sup> Defendants.'

In the present case, the 1<sup>st</sup> Defendant did not have good title to transfer the suit property to the plaintiff and thus proof of the allegations on misrepresentation. The remedy available for the plaintiffs is for compensation for the sums paid on misrepresentation and thus putting the parties in the position they were before the alleged sale.

Having now carefully considered the available evidence, the Court finds that the plaintiffs have succeeded partially on their claim for compensation. The claim for special damages is not warranted as it has not been proved simply pleading the same is not enough. This was reaffirmed by the Court of Appeal in David Bageine -vs- Martin Bundi [1997] eKLR when it stated that: "It has been held time and again by this Court that special damages must be pleaded and strictly proved. ....special damages in addition to being pleaded, must be strictly proved as was stated by Lord Goddard C.J. in Bonham Carter vs. Hyde Part Hotel Limited [1948] 64 TLR 177 thus; "Plaintiffs must understand that if they bring actions for damages, it is for them to prove damage, it is not enough to write down the particulars and, so to speak, throw them at the head of the court, saying, 'this is what I have lost, I ask you to give me these damages, 'They have to prove it.'"

Final disposition

For the above reasons,

1. The Court enters Judgment against the defendants for a refund of monies to the plaintiffs as follow;
  - i. Kshs 885,940/= to the 1<sup>st</sup> plaintiff on plot No 1 and Ksh 51, 850 for plot No 2
  - ii. Ksh 885, 940/= to the 2<sup>nd</sup> plaintiff for plot No 2
  - iii. Ksh 285,940/= to the 3<sup>rd</sup> plaintiff for plot no 3
  - iv. Ksh 466,150/= to the 4<sup>th</sup> plaintiff for plot no 5
  - v. Ksh 1,100,000/= to the 5<sup>th</sup> plaintiff for plot no 6 and 7
  - vi. Ksh 350,000/= to the 6<sup>th</sup> plaintiff for plot no 8(b)
2. Further, the plaintiffs are entitled to costs of the suit and Interest thereof.

It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 13<sup>TH</sup> DAY OF APRIL 2026.**

**MOHAMMED N. KULLOW**

**JUDGE**



Judgment delivered in the presence of: -

Ms. Halima for the Plaintiffs

Mr. Ouma for the Defendants

Philomena W . Court Assistant

