Abdi v Leranan & 3 others (Civil Appeal E031 of 2024)
[2025] KEELC 5521 (KLR) (24 July 2025) (Judgment)

Neutral citation: [2025] KEELC 5521 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT ISIOLO

CIVIL APPEAL E031 OF 2024

JO MBOYA, J

JULY 24, 2025

BETWEEN

AHAMED MOHAMED ABDI ..... APPELLANT

AND

LENANA LERANAN ..... 1ST RESPONDENT

MOHAMED JAAFAR TOPI ..... 2ND RESPONDENT

MOMINA JILLO [MRS. KONSO] ..... 3RD RESPONDENT

ZAINAB NABANYI ..... 4TH RESPONDENT

(Being an appeal from the Judgment of the Senior Resident Magistrate court at Isiolo by Hon. M.A Odhiambo – SRM delivered on 29th November 2024 in ELC case No. 19 of 2019)

JUDGMENT

1. The 1st Respondent [who was the Plaintiff in the subordinate court] filed the Plaint dated 24th June 2019 and wherein same sought the following reliefs:

    a. A declaration that Plot No. 387- Chechelesi belongs to the Plaintiff.

    b. An order of Injunction restraining the defendants, their agents, servants, employees and whomsoever acting on their behalf or instructions from entering, constructing, cultivating, erecting any structures, trespassing, using, selling or in any manner whatsoever from dealing with plot no. 387- Chechelesi.

    c. Costs and Interests of this suit.

2. The appellant herein, together with the 2nd, 3rd and 4th respondents, duly entered appearance and thereafter filed a statement of defence [undated] and wherein the appellant and the named respondents

denied the claims by the 1st respondent. Furthermore, the appellant herein contended that the ground which was claimed by the 1st respondent constituted plot C Chechelesi which was bought/purchased by him [appellant] from one Mohamed Abdi Farah. Additionally, it was contended that the plot under reference is still registered in the name of Mohamed Abdi Farah who sold the plot to the appellant.

3. On the other hand, it was contended that the 1st respondent herein was an employee of one Ambassador Garma who owned a plot in the neighbourhood of the appellant's plot. Moreover, it was posited that the plaintiff does not own any property in the said neighbourhood either as claimed or at all.

4. The suit before the subordinate court [hereinafter referred to as the Original Suit] was heard and disposed of vide Judgment delivered on 29th November 2024 and wherein the learned trial magistrate [Hon. Maureen A. Odhiambo – SRM] found and held that the 1st respondent had duly proved his case. To this end, the learned trial magistrate proceeded to and declared the 1st respondent as the owner of plot NO. 387 Chechelesi. In addition, the learned trial magistrate also issued an order of permanent injunction restraining the appellant and the 2nd, 3rd and 4th respondents from entering upon and or interfering with the suit property. On the contrary, the learned trial magistrate proceeded to and dismissed [sic] the counterclaim with costs to the 1st respondent.

5. It is the said Judgment and the consequential decree which has aggrieved the appellant culminating into the filing of the appeal vide memorandum of appeal dated 24th December 2024. The grounds highlighted at the foot of the memorandum of appeal are as hereunder:

    i. That the learned trial magistrate erred in law and fact by holding that the respondent had proved ownership of the land parcel described as plot No. 387 Chechelesi on a balance of probabilities, despite overwhelming evidence, including documentary and oral submissions, conclusively establishing the appellant's ownership of the suit property.

    ii. That the learned trial magistrate erred in law by failing to find that the respondent did not satisfy the procedural requirements for the acquisition of unalienated government land under the repealed Government *Land Act*.

    iii. That the learned trial magistrate erred in law and fact by relying on the respondent's part development plan (PDP) and council minutes as proof of ownership, despite the absence of a statutory letter of allotment and legally verifiable documentation authenticating the minutes.

    iv. That the learned trial magistrate erred in fact by failing to address the material inconsistency between the date of the respondent's PDP (1990) and the date of the alleged council minutes (1991), which undermined the respondent's claim.

    v. That the learned trial magistrate erred in law by failing to apply the binding precedent established in Dina Management Limited vs *County Government of Mombasa & 5 others [Petition E010 of 2021*] regarding the legality of land acquisition processes, particularly considering the appellant's challenge to the validity of the respondents' council minutes.

    vi. That the learned trial magistrate erred in law and fact by failing to consider the appellant's forensic expert report, which unequivocally established that the respondent's council minutes were forged and inadmissible as evidence.

    vii. That the learned trial magistrate erred in fact by relying on the evidence of the surveyor and land records officer while disregarding the contradictory testimony of their superior, the chief officer for lands, Isiolo county.

viii. That the learned trial magistrate erred in law and fact by disregarding the appellant's evidence, including a valid PDP, statutory letter of allotment and other supporting documents demonstrating lawful acquisition and ownership.

ix. That the learned trial magistrate erred in law by rendering a judgment that contravenes established statutory provisions and binding judicial precedents, thereby denying the appellant substantive justice.

6. The appeal beforehand came up for directions on the 21st May 2025 whereupon the advocates for the parties covenanted to canvass and dispose of the appeal by way of written submissions. To this end, the court ventured forward and circumscribed the timelines for the filing and exchange of the written submissions.

7. The appellant filed written submissions dated 8th July 2025. Suffice it to state that the written submissions by the appellant were filed well out of time. Furthermore, the appellant filed the said submissions alongside the application dated 11th July 2025 and wherein same [Appellant] sought leave of the court to have the submissions under reference to be considered by the court in crafting the Judgment.

8. Though filed out of time, this court has found it necessary to consider the said submissions. In any event, there is no gainsaying that the submissions form part of the record of court and therefore disregarding same may only serve to create a basis for mounting further and unnecessary applications. Simply put, the submissions are hereby taken into account.

9. The appellant has raised two [2] salient issues, namely; whether the learned trial magistrate erred in law and in fact in finding that the First respondent had proved ownership of the suit property and whether the trial court failed to consider the appellant's documentary evidence including a valid part development plan and the statutory letter of allotment.

10. Regarding the first issue, learned counsel for the appellant has submitted that it is the 1st respondent who filed the suit in the subordinate court claiming to be the registered owner of plot number 387 Chechelesi. To this end, it was posited that having laid a claim to be the owner of the suit property, it was incumbent upon the 1st respondent to tender and produce before the trial court plausible and cogent evidence to demonstrate ownership of the suit property. However, it was contended that the 1st respondent did not produce any evidence to underpin his claim to the suit property.

11. Moreover, it was submitted that the 1st respondent's claim to ownership of the suit property was based on 3 documents, namely: the minutes of the county council of Isiolo [now defunct] dated 25th April 1991; a part development plan dated 9th May 1990; and assorted receipts on account of land rates. Nevertheless, it was submitted that the documents which were tendered and produced by the 1st respondent cannot be deployed to declare the 1st respondent as the lawful owner [allotee] of the suit property.

12. Furthermore, it was submitted that the learned trial magistrate failed to appreciate that the 1st respondent did not produce any letter of allotment or at all to demonstrate that the suit property was ever allocated unto to him. To this end, it was contended that the finding by the learned trial magistrate declaring the 1st respondent as the owner of the suit property was erroneous and based on misapprehension of the evidence on record.

13. As pertains to the second issue, learned counsel for the appellant has submitted that the learned trial magistrate ignored and disregarded credible documents that were tendered and produced before the trial court by the appellant. In particular, it was submitted that the appellant herein tendered and

produced inter alia a copy of the letter of allotment in the name of Mohamed Abdi Farah; a copy of the part development plan; a copy of the sale agreement and copy of the power of attorney in favour of Omar Abdi Farah. In this regard, it was posited that the documentation that was tendered on behalf of the appellant clearly showed that the suit property or better still, the disputed ground loss belongs to the appellant.

14. Furthermore, it was submitted that had the learned trial magistrate correctly appraised the evidence tendered by the appellant same [learned trial magistrate] would no doubt, have come to the conclusion that the disputed ground belongs to the appellant.

15. To buttress the foregoing submissions, learned counsel for the appellant has cited and referenced various decisions including Agnes Nyambura Munga vs Lita Violet Shepad (2018) eKLR, County government of siaya vs Okumu (2023) KEELC, commissioner of lands and another vs Kithinji Murugu M'Agere (2014) eKLR, Dr. Joseph N.K Arap Ngok vs Justice Moijo Ole Keiwua & others (1997) eKLR, Fugicha & 3 others vs Musa & another (2025) KEELC and Danson Kimani Gachina & another vs Embakasi Ranching Co. Ltd (2014) eKLR, respectively.

16. The 1st respondent filed written submissions dated 1st July 2025 and wherein same has highlighted four [4] issues for consideration by the court. Firstly, learned counsel for the 1st respondent has submitted that the 1st respondent tendered and produced before the trial court evidence of the part development plan showing that same had been duly allocated the suit plot. Furthermore, it was contended that the part development plan that was tendered and produced by the 1st respondent was found to have marched the physical location of the plot on the ground.

17. Secondly, learned counsel for the 1st respondent has submitted that the evidence that was tendered and produced by the 1st respondent including the part development plan and the minutes of the county council of Isiolo, were never controverted by the appellant. To this end, it was submitted that the learned trial magistrate was right in finding and holding that the 1st respondent was the lawful owner of the suit property.

18. Thirdly, learned counsel for the 1st respondent has submitted that the appellant herein did not tender and or produce any plausible or credible evidence to demonstrate ownership of the suit property. In any event, it was submitted that the documentation tendered and produced by the appellant showed that the land being claimed was registered in the name of Mohamed Abdi Farah. In this regard, the learned counsel for the 1st respondent has invited the court to find and hold that the appellant did not establish his claim to the disputed property.

19. Finally, learned counsel for the first respondent has submitted that the appellant herein failed to call Mohamed Abdi Farah, in whose name the letter of allotment was allegedly issued. To this end, it was contended that having failed to call the said allottee, to come and testify, it was not possible for the court to ascertain whether the said Mohamed Abdi Farah lawfully exists or otherwise.

20. Moreover, it was submitted that the evidence that was tendered by and on behalf of the appellant was riddled with discrepancies and contradictions. To this end, it was contended that the finding of the learned trial magistrate that the appellant's case was undermined by inconsistencies was therefore well-grounded and correct.

21. Flowing from the foregoing, it has been submitted that the appeal beforehand is bereft of merits and thus same ought to be dismissed. In any event, learned counsel for the 1st respondent has invited the court to find and hold that the appellant herein was only seeking to take advantage of the 1st respondent's humble background to deprive the 1st respondent of the suit property. In short, the court has been invited to proceed and dismiss the appeal.

22. Having reviewed the record of appeal, the evidence tendered before the trial court [oral and documentary], having taken into account the written submissions [including the ones filed by the appellant which were filed out of time] and upon considering the applicable law, I come to the conclusion that the determination of the subject appeal turns on two [2] key issues, namely; whether the 1st respondent duly proved his claim of ownership of the suit property to the requisite standard or otherwise; and whether the land trial magistrate correctly apprehended the evidence on record and arrived at the correct finding[s] or otherwise.

23. Before venturing forward to address and analyse the thematic issue[s] highlighted hereinbefore, it is instructive to observe that what is before me is a first appeal from the Subordinate Court. Being a first appeal, this court is vested with the jurisdiction to undertake exhaustive review, appraisal, re-evaluation and scrutiny of the entirety of the evidence tendered before the trial court and thereafter to form an independent conclusion arising out of the evidence on record. Nevertheless, it is imperative to observe that even though this court has the jurisdiction to depart from the factual conclusions and finding[s] of the trial court, such departure must only be undertaken when it is evident that the trial court either acted on a misapprehension of evidence on record; acted on no evidence; where the finding is perverse to the evidence on record, or where it is shown that there exist[s] a demonstrable error of principle, which vitiates [negates] the finding[s] of the trial court.

24. Suffice it to posit that the Jurisdictional remit of the first appellate court was recently re-visited by the Court of Appeal in the case of Kenya Urban Roads Authority & another v Belgo Holdings Limited (Civil Appeal E011 of 2021) [2025] KECA 764 (KLR) (9 May 2025) (Judgment) where the court stated thus;

> 37. We have considered the appeal and this being a first appeal, we are under a duty to subject the entire evidence and the judgment to a fresh and exhaustive examination with a view to reaching our own conclusions in the matter. In carrying out this duty, we have to remember that we had no opportunity of seeing and hearing the witnesses who testified during the trial and to make an allowance for the same. We have also to remember that it is a big thing to overturn the findings of a trial court which has had the singular opportunity of reaching its conclusions based on a combination of the evidence adduced and observation by the court of the demeanour of witnesses.
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> In a nutshell, a first appellate court must of necessity proceed with caution in deciding whether or not to interfere with the findings of a trial court, but of course where such findings are not supported by the evidence on record or where they are founded on a misapprehension of the law, the axe must fall on the impugned judgement. This position is anchored in section 78 of the *Civil Procedure Act*, which requires a first appellate court to re-evaluate, reassess and reanalyse the extracts of the record and draw its own conclusions. These provisions have been underscored in numerous decisions of the Superior Courts, among them Peters v Sunday Post Limited [1958] EA 424, where the predecessor to this Court expressed itself as follows:
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> "Apart from the classes of case in which the powers of the Court of Appeal are limited to deciding a question of law, an appellate court has jurisdiction to review the record of the evidence in order to determine whether the conclusion originally reached upon that evidence should stand; but this jurisdiction has to be exercised with caution. If there is no evidence to support a particular conclusion (and this really is a question of law), the appellate court will not hesitate so to decide. But if the evidence as a whole can reasonably be regarded as justifying the conclusion arrived at on conflicting testimony by a tribunal which saw and heard the witnesses, the appellate court will bear in mind that it has not enjoyed this opportunity and that the view

> of the trial Judge as to where credibility lies is entitled to great weight. This is not to say that the Judge of first instance can be treated as infallible in determining which side is telling the truth or is refraining from exaggeration. Like other tribunals, he may go wrong on a question of fact, but it is a cogent circumstances that a judge of first instance, when estimating the value of verbal testimony, has the advantage (which is denied to the courts of appeal) of having the witnesses before him and observing the manner in which their evidence is given...
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> Where a question of fact has been tried by a judge without a jury, and there is no question of misdirection of himself, an appellate court which is disposed to come to a different conclusion on the printed evidence, should not do so unless it is satisfied that any advantage enjoyed by the trial Judge by reason of having seen and heard the witnesses, could not be sufficient to explain or justify the trial Judge's conclusion.
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> The appellate court may take the view that, without having seen or heard the witnesses, it is not in a position to come to any satisfactory conclusion on the printed evidence. The appellate court, either because the reasons given by the trial Judge are not satisfactory, or because it unmistakably so appears from the evidence, may be satisfied that he has not taken proper advantage of his having seen and heard the witnesses, and the matter will then become at large for the appellate court. It is obvious that the value and importance of having seen and heard the witnesses will vary according to the class of case, and, it may be, the individual case in question... It not infrequently happens that a decision either way may seem equally open and when this is so, then the decision of the trial Judge who has enjoyed the advantages not available to the appellate court becomes of paramount importance and ought not be disturbed. This is not an abrogation of the powers of a Court of Appeal on questions of fact. The judgment of the trial Judge on the facts may be demonstrated on the printed evidence to be affected by material inconsistencies and inaccuracies, or he may be shown to have failed to appreciate the weight or bearing of circumstances admitted or proved or otherwise to have gone plainly wrong."

25. Bearing in mind the principles espoused by the Court of Appeal in the decision [supra], I am now disposed to revert to the subject matter and to discern whether the impugned judgment is well-grounded or otherwise. Notably, I shall address the issues hereinbefore mentioned sequentially, starting with whether the 1st respondent established his claim to ownership of the suit property or otherwise.

26. Back to the issues for determination. Regarding the 1st issue, namely; whether the 1st respondent duly established his claim as pertains to ownership of the suit property, it is worthy to recall and reiterate that the 1st respondent approached the court vide Plaint dated 24th June 2019 and contended that same is the lawful owner and or proprietor of plot number 387 Chechelesi – Isiolo. Moreover, the 1st respondent contended that the plot in question was lawfully and duly allocated unto him vide minutes number 22 of 1991.

27. It was the further position by the 1st respondent that due process was followed in the acquisition of the suit plot, namely; plot number 387 Chechelesi. Besides, the 1st respondent posited that same made an application for part development plan to the county government of Isiolo and the application was duly approved. In this regard, the 1st respondent posited that same is therefore the lawful proprietor of the suit property.

28. The 1st respondent reiterated the foregoing averments in the course of his testimony before the court. Nevertheless, the 1st respondent conceded that same was never issued with a letter of allotment. For ease of appreciation, it is appropriate to reproduce the evidence of the 1st respondent while under cross-examination by learned counsel for the appellant and the rest of the respondents.

29. Same [1st respondent] stated thus,

> "I was allocated the plot in 1991. Shown page PMFI 6 and the witness states that same are the minutes. The forms I did not doctor the minutes. I do not know why it is starting from prayer 14. The PDP is dated 9th May 1990. The minutes were approved in 1991. I do not have a letter of allotment".

30. What is discernible from the excerpt, which I have reproduced in the preceding paragraph, is to the effect that the 1st respondent did not procure and or obtain any letter of allotment over and in respect of the suit property. Furthermore, what becomes apparent is that the 1st respondent's claim to the suit property is premised on the minutes of the county council of Isiolo [now defunct] and the part development plan dated 9th May 1990.

31. At any rate, it is not lost on me that the learned trial magistrate deployed the said minutes, the part development plan and the report dated 4th February 2022; by the County Physical Planner – Isiolo in finding and holding that the suit property lawfully belongs to the 1st respondent.

32. To my mind, the 1st respondent herein was obligated to tender and produce before the trial court a copy of the application letter [if any] which was addressed to the county council of Isiolo [now defunct], applying for allotment of land. Moreover, the 1st respondent was also called upon to tender and produce certified copies of the minutes of the county council of Isiolo approving the application for allotment of land and thereafter a copy of the letter of allotment [if any] issued by the commissioner of lands [now defunct].

33. Additionally, it is important to underscore that the 1st respondent was obligated to tender and produce evidence of letter of acceptance, if any; and payments of the standard premium, relative to the allotment of the suit property.

34. Be that as it may, I beg to observe and highlight that the documentation that was tendered and produced by the 1st respondent fell far short of demonstrating that the 1st respondent was lawfully allocated the suit plot.

35. To start with, the 1st respondent cannot purport to have been lawfully allocated the suit plot yet same has no letter of allotment, which is the document underpinning allotment of what was previously unalienated government land. Absent a letter of allotment, it is difficult to comprehend on what basis the 1st respondent contends that same was duly allocated the suit property.

36. First forward, it is also important to recall that the minutes which were tendered and produced by the 1st respondent appear to be doctored in so far as same curiously starts at minute number 14 of 1991. To this end, the question that does arise is whether the minutes under reference are complete or whether same have been doctored to suit a particular narrative.

37. Other than the foregoing, there is no gainsaying that the minutes under reference were also not confirmed by the chairman of the Works, Town Planning and Markets committee. For good measure, the segment of the minutes relating to confirmation is blank.

38. Additionally, it suffices to highlight that the impugned minutes have also not been certified. To this end, there is no gainsaying that though the minutes tendered and produced as part of the exhibit[s] before the court, same [minutes] have no probative value taking into account the provisions of section 80 of the *Evidence Act* Cap 80 Laws of Kenya.

39. The Supreme Court in the case of Kenya Railways Corporation & 2 others v Okoiti & 3 others (Petition 13 & 18 (E019) of 2020 (Consolidated)) [2023] KESC 38 (KLR) (16 June 2023) (Judgment) had occasion to expound on the necessity to have public documents certified. Furthermore, the Supreme Court also highlighted the fact that where a public document is not duly certified then same is devoid of probative value.

40. For coherence, the Supreme Court [the apex Court] stated thus;

> 80. The *Evidence Act* Cap 80 Laws of Kenya, applies to all proceedings, including constitutional petitions, save for the exceptions set out therein. Section 2 thereof, provides that:
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> Application.
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> 1. This Act shall apply to all judicial proceedings in or before any court other than a Kadhi's court, but not to proceedings before an arbitrator 2.Subject to the provisions of any other Act or of any rules of court, this Act shall apply to affidavits presented to any court.
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> 81. The *Evidence Act* provides for admissibility of evidence with section 80 setting out the manner in which public documents may be produced in court. It states: Certified copies of public documents.1.Every public officer having the custody of a public document which any person has a right to inspect shall give that person, on demand, a copy of it on payment of the legal fees therefor, together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof, as the case may be, and such certificate shall be dated and subscribed by such officer with his name and his official title, and shall be sealed whenever such officer is authorized by law to make use of a seal, and such copies so certified shall be called certified copies.
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> 2. Any officer who by the ordinary course of official duty is authorized to deliver copies of public documents shall be deemed to have the custody of such documents within the meaning of this section.
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> 82. This procedure ensures the preservation of the authenticity and integrity of the public documents filed and produced in court. Further, section 81 of the *Evidence Act* allows the production of certified copies of documents in proof of the contents of the documents or parts of the documents of which they purport to be copies.
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> 83. From the foregoing provisions, public documents can only be produced in court as evidence through the procedure set out above. They can be produced as evidence in court by way of producing the original document or a copy that is duly certified. The documents having been adduced in evidence without adhering to these rather straightforward provisions, were thereby outrightly rendered inadmissible.

41. Bearing in mind the dictum in the decision [supra], I find no difficulty in holding that the minutes which were tendered and produced by the 1st respondent were devoid of probative value. Same cannot escalate the 1st respondent's case any further.

42. Notwithstanding the foregoing, it is also worthy to recall that the 1st respondent's claim to the suit property was also predicated on the part development plan number 117/90/4 which is dated 9th May 1990. However, a look at the said part development plan reveals that same was neither checked nor approved by the director of physical planning and the commissioner of lands [now defunct]. Quite

clearly, the impugned part development plan is invalid and devoid of any legal basis. In this regard, same cannot be deployed to underpin a claim of ownership of Land or at all.

43. The importance of a part development plan in the alienation [allocation] of what was previously unalienated government land was elucidated by the Supreme Court in the case of Dina Management Limited v County Government of Mombasa & 5 others (Petition 8 (E010) of 2021) [2023] KESC 30 (KLR) (Constitutional and Human Rights) (21 April 2023) (Judgment].

44. For coherence the apex Court stated thus;

> 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 allotees.
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> 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 plot 132. A part development plan (PDP) can only be prepared in respect to Government land that has not been alienated or surveyed..."
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> 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.
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> 106. We note that the suit property was allocated to HE Daniel T Arap Moi, who was not a party to the suit. The 2nd to 6th respondents on the other hand, at the trial court, in the replying affidavit of Gordon Odeka Ochieng in response to ELC Petition 12 of 2017, stated that certain documents that were required to support the allocation of the suit property to HE Daniel T Arap Moi were missing. These were "the letter of application addressed to the Commissioner of Lands seeking to be allocated the suit land; and a Part Development Plan (PDP) showing the suit property in relation to the neighbouring parcels of land."

45. In my humble , albeit considered view, an incomplete and unapproved part development plan [like the one that was tendered by the 1st respondent] cannot suffice to help the 1st respondent stake a claim to the suit property.

46. Before concluding on this issue, it is imperative to observe that there is a growing tendency where litigants, the 1st respondent not excepted, approach courts of law with fictitious minutes [not certified] and fictitious part development plans and thereafter seek to persuade the court to declare same as lawful owners of the purported plot. It suffices to state that time is ripe [nigh] for the judicial officers to take seriously the dictum of the Supreme Court in the case of Kenya Railways Corporation & 2 others v Okoiti & 3 others (Petition 13 & 18 (E019) of 2020 (Consolidated)) [2023] KESC 38 (KLR) (16 June 2023) (Judgment) as pertains to certification of Public Document[s] being produced and tenered in Court[s].

47. Additionally, it is also important to highlight that the mere fact that a particular document has been tendered and admitted before the court does not by and of itself amount to proof of such a document. Instructively, the courts before whom such documents are tendered must still subject the documents to the rigors of the law. [See Kenneth Nyaga Mwige vs Austin Kiguta (2015) eKLR; Finmax Self Help CBO Group vs Kericho Technical Institute (2021) eKLR and Bilia Matiang'i vs Kissi Bottlers Ltd (2021) eKLR, respectively.

48. Turning to the second issue, namely; whether the learned trial magistrate misapprehended the totality of the evidence on record, it is important to highlight that the learned trial magistrate assumed that allotment of land [unalienated government land] can be deemed as complete without the requisite letter of allotment. Furthermore, the learned trial magistrate also failed to appreciate that a part development plan by and of itself does not amount to an allotment. In any event, there is no gainsaying that the learned trial magistrate did not appreciate that the impugned part development plan number 117/90/4 was not approved and hence same was invalid.

49. Other than the foregoing, it is also not lost on me that the learned trial magistrate paid undue premium to the report dated 4th February 2022 by the county physical planner in arriving at the conclusion that the 1st respondent was the lawful owner of the suit property. However, the learned trial magistrate failed to correctly internalize the said report and thus did not discern various observations contained thereunder.

50. Moreover, it appears that the learned trial magistrate believed that the report by the county physical planner, by and of itself, would substitute the letter of allotment and the attendant documents that would underpin due process in the allotment of what was previously trust land. To this end, I beg to reiterate that the process of allotment of what was previously trust land was well captured at the foot of section 53 of the Trust *Land Act*, Cap 288 Laws of Kenya, [now repealed]. [See also the holding in the case of Rinya Hospital Ltd vs The Town Council of Awendo (2010) eKLR, Ethics & Anticorruption Commission vs Eunice Mugalia & another KSM Civil Appeal No. 39 of 2019; [unreported] and Funzi Island Development Ltd vs The county council of Kwale (2014) eKLR

51. In my humble albeit considered view, the learned trial magistrate did not correctly apprehend the applicable legal position guiding the determination of allotment of what was previously trust land. Suffice it to respectfully draw the attention of the trial court to various decisions cited in the preceding paragraphs.

52. I must have said enough to demonstrate that the judgment and the consequential decree of the learned trial magistrate was based and or premised on a misapprehension of the evidence on record and the

relevant law. In this regard, I must respectfully disagree with finding[s] and conclusion[s] of the learned trial magistrate.

53. Before concluding the judgment, there is one more issue that requires mention and a short discussion. The issue relates to whether there was a counterclaim capable of being dismissed by the Learned Trial Magistrate. I beg to state that I have reviewed the entire file and I have only found a statement of defence filed on behalf of the 1st & 2nd defendants [now the appellant] and the 2nd respondent which is undated. I am not been able to trace any counterclaim even after reviewing the entire of the record from the lower court. In this regard, the limb of the judgment speaking to the counterclaim appears to be misdirected.

54. Nevertheless, it is also important to highlight that even if there were such a counterclaim, [which is not the case] same would have been premature and misconceived, taking into account that the appellant herein testified that the property claimed by him [appellant] was still registered in the name of Mohamed Abdi Farah. [See cross-examination of DW 1 by learned counsel for the 1st respondent].

Final Disposition:

55. Flowing from the analysis highlighted in the body of the Judgment, it must have become evident that the appeal beforehand is meritorious. Suffice it to state that the appellant has been able to demonstrate errors of law which vitiate the Judgment and consequential decree of the learned trial magistrate.

56. Consequently, and in the premises, the final orders that commend themselves to the Court are as hereunder;

    I. The Appeal be and is hereby allowed.

    II. The Judgment and consequential decree of the learned trial dated 29th November 2024 be and is hereby set aside in its entirety.

    III. In lieu thereof, the 1st respondent's suit vide Plaint dated 24th June 2019 be and is hereby dismissed.

    IV. Costs of the Appeal be and are hereby awarded to the Appellant.

    V. Costs of the proceedings in the subordinate court be and are hereby awarded to the Appellant.

    VI. Costs in terms of clause (IV) and (IV) shall be agreed upon and in default, be taxed or assessed [where applicable].

57. It is so ordered.

DATED, SIGNED AND DELIVERED AT ISIOLO THIS 24TH DAY OF JULY 2025.

OGUTTU MBOYA, FCIArb; CPM [MTI-EA].

JUDGE

In the presence of:

Mutuma – Court Assistant

Mr. Mwangi holding brief for Mr. Warsame for the Appellant

Mr. Lekoona for the 1st respondent

No appearance for the 2nd, 3rd and 4th respondents