



REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT AT KABARNET

ELC CASE NO. E008 OF 2023

**RENISON KIBET SEGUTON (Suing as the legal
Administrator of the Estate of Zephaniah
Kipkebut Chepkonga (Deceased) 1ST
PLAINTIFF**

**GRACE KABON CHEPKONGA 2ND
PLAINTIFF**

GRACE KOBILO KIPKEBUT 3RD PLAINTIFF

= VERSUS =

SIMON AMDANY CHESIRE DEFENDANT

JUDGMENT

1. By a plaint dated 19th May, 2022 and amended on 19th May 2023, the plaintiffs herein instituted this suit seeking judgment against the defendants for: -

- a) An order of permanent injunction to restrain the defendant by himself, his agents and/or servants from trespassing on, leasing, ploughing, constructing on, selling or in any other way interfering with the plaintiffs use and enjoyment of the benefits on the parcel of land known as

Kabarnet Municipality/171, measuring approximately 0.2393 ha;

- b) An order of declaration that the parcel of land known as Kabarnet Municipality/171, measuring approximately 0.2393 ha belong to the plaintiffs for the benefit of the Estate of the late Zephaniah Kipkebut Chepkonga;
- c) An order of mandatory injunction to compel the Chief Land Registrar Baringo County and the County Land Adjudicator and Settlement Officer Baringo County to cancel the certificate of lease for the parcel of land known as Kabarnet Municipality/171, measuring approximately 0.2393 ha purported to have been issued to the defendant herein;
- d) Damages
- e) Costs of the suit.

2. As can be discerned from the averments/contentions on the amended plaint, the plaintiffs suit is premised on the grounds that the parcel of land known as Kabarnet

Municipality/171, measuring approximately 0.2393 ha (hereinafter referred to as the suit property) belongs to them; that they acquired the suit property legally and that the defendant had trespassed into the suit property thereby denying them the right to full enjoyment of the suit property and subjecting them to anxiety, loss and damage.

3. The plaintiffs acknowledge that the 1st defendant is in possession of a certificate of lease but contend that the 1st defendant's certificate of lease was fraudulently acquired. The plaintiffs have given the particulars of fraud urged against the 1st defendant as follows: -

- a) Fraudulently claiming ownership over their parcel;
- b) Fraudulently using fake documents to obtain certificate of lease;
- c) Fraudulently causing obstruction of the plaintiff from accessing and obtaining her documents;
- d) Misrepresenting himself to the County Land Adjudicator and Settlement Officer, Baringo County that he had acquired the subject parcel;

- e) Fraudulently refusing to surrender the certificate of lease to the Chief Land Registrar, Baringo County;
 - f) Fraudulently trespassing on the plaintiffs' property.
4. The defendant filed a statement of defence and counterclaim, which he later amended culminating in a further amended statement of defence and counterclaim, dated 30th June, 2023.
 5. Through his further amended statement of defence and counterclaim, the defendant admits that he offloaded building materials on the suit property and avers that he has a valid certificate of lease issued to him by the Government of Kenya in respect of the suit property on 10th April, 2008.
 6. The defendant further avers that he bought the suit property from Musa Kipsergon Chebegere and that he conducted due diligence before he bought the suit property by conducting a search, obtaining lease documents from

the Government of Kenya and getting the approval of the Municipal Council of Kabarnet before transferring the suit property to himself.

7. The defendant denies the particulars of fraud levelled against him and avers that he had been in occupation of the suit property without interruption and that he had been paying land rent and rates in respect of the suit property.
8. Terming the plaintiffs' suit misconceived, ill advised, frivolous, vexatious, and an abuse of the court process, the defendant, by way of counterclaim, urges this Court to declare him as the owner of the suit property, order that the title issued to the plaintiffs be cancelled and permanently restrain the plaintiffs and any person(s) acting under the plaintiffs' control from trespassing into the suit property.
9. The plaintiffs filed a reply to the further amended statement of defence and a defence to the further

amended counterclaim, dated 31st July 2023, in which they reiterate their pleaded case and contend that the defendant's counterclaim is misconceived, inept, incompetent, bad in law, an afterthought and does not disclose any reasonable cause of action against them. The plaintiffs urge the court to dismiss the counterclaim with costs to them.

10. When the suit came up for hearing, the plaintiffs by themselves and through the evidence of their witnesses, led evidence that shows that: -
- i) The suit property was allocated to a none legal entity known as Sowes Investment.
 - ii) That the allocation of the suit property to Sowes Investment was made pursuant to an application made by the proprietor of Sowes Investment, Z. K Chepkonga, vide a letter to the Commissioner of Lands, dated 31st July, 1993. The letter was written and signed by the proprietor of Sowes Investment Z. K Chepkonga.

- iii) In the application letter, the applicant indicated that he wanted to be allocated the land for the purpose of putting up a petrol station.
- iv) The application letter has an endorsement/signature dated 7th August, 1993 showing that the application was approved.
- v) Following approval of the application, the Commissioner of lands, on behalf of Baringo County Council, offered to Soves Investment a grant of the parcel described in the letter of offer as Uns. Commercial Plot-Kabarnet Municipality.
- vi) The letter of offer/allotment, dated 22nd November, 1993 was accompanied by Plan No.R/B/328/93/4.
- vii) The letter of allotment had conditions which the allottee was supposed to formally accept. The conditions included the area-approximately 0.09 hectares; Term-99 years from 1st December 1993; stand premium 14,000/-; annual rent 1,800/-.

viii) The allottee was required to inform/notify the Commissioner of Lands about his acceptance of the conditions in the letter of allotment, in writing, and make the requisite payments in respect thereof within 30 days from 22nd November, 1993.

ix) It was a term of the letter of allotment/offer that if acceptance and payment respectively were not received within 30 days, the offer would be considered to have lapsed.

x) The allottee, Soves Investment, made part payment of the amount he was required to pay in the letter of offer on 6th April 1995 (outside the time stipulated in the letter of allotment). On that day, the offeree paid the stand premium of Ksh.14, 000/- vide receipt No.67070.

11. The evidence adduced by the plaintiff, through PW5, Omolo

O. Patroba, further shows that: -

a) On 27th May, 2010 the Commissioner of lands wrote to the offeree informing him that the acreage of the

plot increased significantly, from 0.09 to 0.2393 Ha, after survey prompting revaluation. The Commissioner of Lands advised the offeree that the new stand premium was Kshs.63,930/- and that the new annual rent would be Kshs.12,786/- per annum with effect from 1st June, 2010. The offeree was required to pay additional stand premium of Kshs.49,930/-, additional registration fees of Kshs.250 and additional stamp duty of Kshs.1,950/-.

b) The offeree paid the additional stand premium as attested by receipt number 170437 issued by Kabarnet Municipal Council on 31st May, 2010.

12. The process referred to herein above culminated in issuance of a lease, dated 30th May 2011 to Zephania Kipkebut Chepkonga, Grace Kabon Chepkonga and Grace Kobilu Kipkebut.

13. Zephania Kipkebut Chepkonga, Grace Kabon Chepkonga and Grace Kobilu Kipkebut, who were indicated in the lease

as the proprietors of Sowes Investment, were subsequently registered as proprietors of the suit property and issued with a certificate of lease in respect of the suit property on 9th January, 2013.

14. The evidence adduced further, shows that as at the time of registration of the suit property in the names Zephania Kipkebut Chepkonga, Grace Kabon Chepkonga and Grace Kobilo Kipkebut, the lands office was aware that there existed another certificate of lease issued to Simion Amdany Chesire, the defendant herein.
15. The evidence adduced by the defendant shows that the defendant's interest in the suit property is traceable to a letter of allotment said to have been issued by the Commissioner of Lands to Stephen Kiptoben on 1st July, 1997 in respect of the suit property. The allottee (Stephen Kiptoben) sold his beneficial interest in the suit property to Musa Kipsergon Chebere (DW2). That fact was laid bare by DW2 who informed the Court as follows: -

“I purchased Kabarnet Municipality/171 from Stephen Kiptoben on 15th July 1999. I paid the full purchase price. At that time the land did not have a title. It had an allotment letter...”.

16. Pursuant to the transaction entered between DW2 and Stephen Kiptoben, a certificate of lease was processed and issued in favour of DW2.
17. DW2 later sold the suit property to the defendant, leading to issuance of a certificate of lease in favour of the defendant.
18. According to the testimony of PW5, Ojwang Omolo Patroba, the Lands office could not trace the letter of allotment contained in the defendant’s list of documents dated 1st July, 1997 and the certificate of official search dated 3rd December, 2007.

19. Pursuant to directions given on 1st December 2025 and 13th March 2026, parties filed submissions which I have read and considered.
20. I have also carefully considered the cases urged by the respective parties, the evidence adduced in support thereof and the applicable law.
21. As pointed out herein above, both the plaintiffs and the defendant claim to be entitled to the suit property. Their claim is premised on the claim that the suit property was allocated to them and/or their predecessors in entitlement to the suit property. That being the case, this court is called upon to interrogate the process that led to acquisition of the parties interest in the suit property with a view of determining whether the parties and/or their predecessors in entitlement to the suit property adhered to the applicable law and procedures in acquiring their interest in the suit property.

22. The Supreme Court of Kenya in the case of **Torino Enterprises Limited v. Attorney General (Petition 5 (E006) of 2022 (2023) KESC 79 (KLR) (22 September 2023) (Judgment)** stated/held as follows concerning a letter of allotment as the basis of acquisition of title to land:

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“...can an allotment letter pass good title? It is settled law that an allotment letter is incapable of conferring interest in land, being nothing more than an offer, awaiting the fulfilment of conditions stipulated therein. In Dr Joseph NK Arap Ng’ok v Justice Moiyo Ole Keiyua & 4 others CA 60/1997 [unreported]; and in Gladys Wanjiru Ngacha v Teresa Chepsaat & 4 others HC Civil Case No 182 of 1992; [2008] eKLR, the superior courts restated this principle as follows: “It has been held severally that a letter of allotment per se is nothing but an invitation to treat. It does not constitute a contract between the

offerer and the offeree and does not confer an interest in land at all” [Emphasis added].

59. The pronouncement in Gladys Wanjiru and Dr Joseph NK Arap Ng’ok (supra) has been echoed in various Environment and Land Court decisions post the 2010 Constitution, including; Lilian Wanjeri Njatha v Sabina Wanjiru Kuguru & another, Environment and Land Case No 471 of 2010; [2022] eKLR; John Elias Kirimi v Martin Maina Nderitu & 4 others, Environment and Land Suit No 320 of 2011; [2021] eKLR; and Kadzoyo Chombo Mwero v Ahmed Muhammed Osman & 11 others, Environment and Land Case No 42 of 2021; [2021] eKLR, to mention but a few.

60. Suffice it to say that an Allottee, in whose name the allotment letter is issued, must perfect the same by fulfilling the conditions therein. These conditions include but are

not limited to, the payment of a stand premium and ground rent within prescribed timelines. But even after the perfection of an allotment letter through the fulfillment of the conditions stipulated therein, an allottee cannot pass valid title to a third party unless and until he acquires title to the land through registration under the applicable law. It is the act of registration that confers a transferable title to the registered proprietor, and not the possession of an allotment letter. In Peter Wariire Kanyiri v Chrispus Washumbe & 2 others, Environment and Land Court Case No 603 of 2017; [2022] eKLR, Kemei, J held as follows: “[15]. In the case at hand, in the absence of any title registered in the name of the plaintiff, the court is unable to hold that the plaintiff is the registered proprietor of the land. This is because the

letter of allotment lapsed within 30 days and the same is of no legal consequences” [Emphasis added].

61. While we agree with the general tenor of the learned Judge’s foregoing pronouncement, we remain uncomfortable with his inference that the allotment letter was of no legal consequence solely because it had lapsed after 30 days. We must reiterate the fact that an allotment letter in and by itself, is incapable of conferring a transferable title to an allottee. Put differently, the holder of an allotment letter is incapable of transferring or passing valid title to a third party on the basis of the allotment letter unless and until he becomes the registered proprietor of the land consequent upon the perfection of the Allotment Letter. It matters not therefore that the allotment letter has not lapsed....”

62. We have already declared that an allotment letter, even if perfected, cannot by and in itself confer transferable title to the Allottee, unless the latter completes the process by registration. Therefore, the grim reality is that all transactions between Renton Company limited and the appellant were a nullity in law....”

23. Whilst the totality of the evidence adduced in this case shows that none of the parties to this suit adhered to the legal principles espoused in the above cited decision of the Supreme Court in that the plaintiff did not accept the offer and make payment in respect thereof within the time stipulated in the letter of offer leading to lapse of the offer; and that the predecessor in entitlement to the certificate of lease held by the defendant acquired his interest in the suit property from a person who had no capacity to sell it, as he had not acquired a certificate of lease in respect of the grant, if any, that had been issued to him; the totality of the

evidence adduced in this case shows that the plaintiff's predecessor in entitlement to the suit property, accepted the offer, outside the time stipulated in the letter of allotment and made the requisite payment in respect thereof, albeit out of time. The acceptance and payment was accepted by the allocating authority. In the absence of any evidence of fraud or illegality in the acquisition of the certificate of title held by the plaintiffs, I will treat the procedural irregularities in processing of the title as mere irregularities that are incapable of vitiating the lease.

24. Although the plaintiffs did not lead evidence capable of proving the pleaded fraud against the defendant, upon review of the evidence adduced by DW2 concerning the circumstances upon which he acquired his certificate of lease, which he later on transferred to the defendant, based on the decision of the Supreme Court that an holder of a letter of allotment is incapable of passing a valid interest of land to a purported buyer, I do find, as a matter of law that

DW2 did not obtain a good title to the suit property which he could pass to the defendant.

25. The upshot of the foregoing is that the plaintiffs have proved their case against the defendant on a balance of probabilities. Consequently, I enter judgment in their favour in terms of prayers (a), (b), and (c) of their amended plaint.

That to say;

Judgment be and is hereby entered in favour of the plaintiffs against the defendant for:-

- a) An order of permanent injunction do issue and is hereby issued, restraining the defendant by himself, his agents and/or servants from trespassing on, leasing, constructing on, selling or in any other way interfering with their use and enjoyment of benefits on the parcel of land known as Kabarnet Municipality/171, measuring approximately 0.2393 ha;
- b) An order of declaration do issue and is hereby issued, declaring that the parcel of land known as Kabarnet Municipality/171, measuring approximately 0.2393 ha

belongs to plaintiffs for the benefit of the Estate of the late Zephaniah Kipkebut Chepkonga

- c) An order directed to the Chief Land Registrar Baringo County and the County Land Adjudicator and Settlement Officer Baringo County to issue and is hereby issued, directing the Chief Land Registrar Baringo County and the County Land Adjudicator and Settlement Officer Baringo County to cancel the certificate of lease for the parcel of land known as Kabarnet Municipality/171, measuring approximately 0.2393 ha purported to have been issued to the defendant herein.

26. On costs, being of the view that the defendant is a victim of fraud and/or irregularities committed by public officers who irregularly caused the land to be registered in the name of DW2, who later on transferred it to the defendant, I order that parties bear their own costs of the suit.

27. Orders accordingly.

**Judgement dated, signed and delivered virtually at Busia
this 13th day of April, 2026**

L. N. WAITHAKA

JUDGE

In the presence of;

Ms Rono H/B for Mr Tarigo for the plaintiffs

N/A for the Defendant

Court Assistant; Tracy