Meru County Government v Murea (Environment and Land Appeal E040 of 2023) [2025] KEELC 5532 (KLR) (24 July 2025) (Judgment)

Neutral citation: [2025] KEELC 5532 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ENVIRONMENT AND LAND APPEAL E040 OF 2023

JO MBOYA, J

JULY 24, 2025

BETWEEN

MERU COUNTY GOVERNMENT ..... APPELLANT

AND

JACOB MURIUNGI MUREA ..... RESPONDENT

(Being an appeal from the Judgment and Decree of the Chief Magistrate's court at Meru Hon. L.N Juma – Principal Magistrate, dated 23rd May 2023 in CMC ELC No. 100 of 2018)

JUDGMENT

1. The Respondent herein [who was the Plaintiff in the subordinate court] filed the Plaint dated 22nd September 2017; and wherein same sought diverse reliefs. The Plaint under reference was subsequently amended resting with the amended Plaint dated 19th October 2021; and wherein the Respondent sought the following reliefs:

    a. A declaration that the Defendants abused its office and acted illegally and unconstitutionally in alienating plot number 58 Timau reference number L.R 2890/254 within Timau Township, Meru county.

    b. A declaration that the alienation of plot number 58 Timau Reference number L.R number 2890/254 within Timau Township was done in breach of the rules of natural justice, procedural and administrative fairness and national values and principles of governance.

    c. Compensation for the compulsory acquisition of the portion of the land known as plot number 58 Timau, Reference number L.R 2890/254 within Timau Township in Meru county measuring 0.0558 ha by the Defendants.

    d. Damages for loss of actual earnings.

e. Costs of this suit.

f. Any other relief the court may deem fit to grant.

2. The Appellant herein [who was the 1st defendant in the subordinate court] duly entered an appearance and thereafter filed a statement of defence dated 23rd October 2017. The 1st Defendant does not appear to have filed an amended statement of defence. If any was ever filed, then none is traceable on the record of the court.

3. The 2nd defendant [not a party to the appeal] though duly served with the amended Plaint did not enter an appearance and or file any statement of defence.

4. The suit before the subordinate court was heard and disposed of vide Judgment delivered on 23rd May 2023 whereupon the learned trial magistrate found and held that the respondent had duly proved his case. To this end, the learned trial magistrate proceeded to and granted various reliefs in favour of the Respondents.

5. It is the said Judgment and the consequential decree which has aggrieved the appellant, leading to the filing of the memorandum of appeal dated 6th June 2023. The memorandum of appeal has highlighted the following grounds;

   i. That the learned trial magistrate erred in law and fact in coming to the conclusion that plot no. Timau and lease certificate Ref No. L.R. 2890/54 are one and the same without proof of that fact.

   ii. That the learned trial magistrate erred in law and fact in finding the appellant never challenged the respondent's certificate of title despite their witness raising queries and appellant's submissions as to how the PDP (part development plan) for L.R No. 2890/254 was for the year 2003 yet the allotment letter produced was from the year 1993 despite allotment letter usually being generated from PDP.

   iii. That the learned trial magistrate erred in law and fact in not considering the appellant's submissions that the respondents' land rates payments were by the defunct county council of Meru central and not the county government of Meru, hence any liability under the transitional clause would be shouldered by the National government.

   iv. That the learned trial magistrate erred in law and fact by finding that both defendants at the trial court ought to compensate the plaintiff at the trial court for compulsory acquisition, despite both the *Land Act* at sections 112 to 120 making that the purview of the national land commission, the 2nd defendant at the trial court.

   v. That the learned trial magistrate erred in law and fact by finding both defendants at the trial court culpable of the plaintiffs claim despite the 1st defendants witness at the trial court intimating that the sole custodian of all documents pertaining the plaintiffs' suit was the 2nd defendant who was never served with any hearing notices as was established during the trial.

   vi. That the learned trial magistrate erred in law and fact by awarding prayers not specifically pleaded in the amended plaint.

6. The Appeal beforehand came up for mention/directions on the 20th May 2025 whereupon the advocates for the parties confirmed that the record of appeal had been duly filed and served. Furthermore, the advocates for the parties covenanted to canvass and dispose of the appeal by way of written submissions.

7. Arising from the foregoing, the court proceeded to and issued directions, including that the appeal be canvassed by way of written submissions. Moreover, the court ventured forward and circumscribed the timelines for the filing and exchange of the written submissions.

8. The Appellant filed written submissions dated 9th June 2025 and wherein the appellant has highlighted two [2] key issues; namely, whether the respondent is the registered owner of L.R 2890/254 [the suit property]; and whether there was compulsory acquisition of the respondent's parcel of land or otherwise.

9. Regarding the first issue, learned counsel for the appellant has submitted that the respondent herein failed to tender and or adduce credible evidence to demonstrate that what was contended to be plot No. 58 Timau, is one and the same plot as L.R No. 2890/254 [the suit property]. Furthermore, it has been submitted that the respondent failed to demonstrate that the terms of the letter of allotment which was relied upon were duly complied with or at all.

10. Furthermore, it was the submission by learned counsel for the appellant that even though the respondent tendered a letter of allotment, the respondent, however, failed to produce before the court a copy of the duly approved part development plan underpinning the issuance of the letter of allotment. In particular, it was contended that in the absence of a duly approved part development plan, the respondents' claim to the suit property was vitiated.

11. Additionally, it was submitted that what the respondent tendered and produced before the court was a Deed plan which was issued in the year 2003 and yet the letter of allotment is said to have been issued in the year 1993. To this end, it was contended that the respondent did not place before the court credible evidence to underpin the issuance of the certificate of title before the court.

12. Further and at any rate, it was submitted that the mere possession of a certificate of title does not by itself and of itself confer upon the respondent's valid title, or ownership to the suit property. In this regard, learned counsel for the appellant has cited and referenced the holding in the case of Daudi Kiptugen vs the Commissioner of Lands and 4 others [2015] eKLR and Wambui vs Mwangi & 2 others [2021] KECA, respectively.

13. With respect to the second Issue, learned counsel for the appellant has submitted that the respondent failed to demonstrate that the suit property had been compulsorily acquired. In any event, it was submitted that the respondent failed to demonstrate that the appellant herein was responsible for the purported compulsory acquisition. To this end, learned counsel for the appellant has submitted that the process of compulsory acquisition is well provided for by the provisions of sections 107 to 133 of the *Land Act* 2012 and the Respondent ought to have tendered evidence to demonstrate that there was [sic] an attempt to compulsorily acquire the suit property.

14. Moreover, learned counsel for the appellant has submitted that even if the court were to find that there was compulsory acquisition, the counsel submitted that the body chargeable with compensation is the National Land Commission and not the appellant herein.

15. Premised on the foregoing, learned counsel for the Appellant has submitted that the learned trial magistrate committed a grave error in finding and holding that the appellant herein was jointly responsible for compensating the respondent on the basis of compulsory acquisition, yet such compensation [if any] ought to be paid by the Commission. In this regard, learned counsel referenced the decision in the case of Patrick Musimba vs National Land Commission (2016) eKLR.

16. Flowing from the foregoing, learned counsel for the appellant has implored the court to find and hold that the appeal beforehand is meritorious. In this regard, the court has been invited to allow the appeal and set aside the Judgment and the consequential decree of the subordinate court.

17. The respondent filed written submissions dated 24th June 2025 and wherein the respondent has chosen to address the grounds of appeal sequentially. In this regard, learned counsel for the respondent has highlighted and addressed the six [6] issues underpinned by the grounds of appeal.

18. Regarding the first ground of appeal, learned counsel for the respondent has submitted that the respondent tendered and produced before the trial court assorted documents including letter of allotment [exhibit P1], form of transfer [exhibit P3], survey receipts [exhibit P5] and the certificate of lease [exhibit P20], confirming that same [respondent] is the lawful and legitimate owner of the suit property. To this end, it has been submitted that the totality of the evidence tendered before the trial court was sufficient to prove the respondents' rights to and in respect of the suit property. Furthermore, learned counsel cited and referenced the provisions of section 26 (1) of the *Land Registration Act*, [2012].

19. With respect to the 2nd ground of appeal, learned counsel for the respondent has submitted that the appellant herein did not challenge the validity and propriety of the respondent's certificate of title and the letter of allotment. Further and in any event, it has been submitted that the trial court duly appraised the evidence tendered and thus the respondent's title was found to be lawful.

20. Regarding the 3rd ground of appeal, learned counsel for the respondent has submitted that the respondent herein had been paying rates to the County Council of Meru Central [now defunct] and to the extent that the rates were being paid to the county council of meru central, it was contended that the appellant herein took over and assumed the liabilities of the said county council of Meru central. Furthermore, it has been contended that the provisions of Section 59 of the County Government Act 2012, confirm that the liabilities of the County council of Meru Central [now defunct] were taken over by the Appellant.

21. As pertains to the fourth ground of appeal, learned counsel for the respondent has submitted that the trial court was correct in finding and holding that the appellant and National Land Commission [NLC] were jointly liable for the illegal compulsory acquisition. In any event, it was submitted that the appellant herein was and is the beneficiary of the illegal acquisition of the suit property. Moreover, learned counsel for the respondent has contended that it is the appellant who is in occupation of the suit property and thus same [appellant] cannot evade liability.

22. With regard to ground 5 of the Memorandum of Appeal, learned counsel for the appellant has submitted that the appellant herein cannot be heard to contend that the National Land Commission was not duly served with the court process. In any event, it has been posited that the national land commission was duly served and the trial court was satisfied with the service of Court process upon National Land Commission.

23. Additionally, it has been submitted that arising from the failure by National Land Commission to enter appearance and file pleadings, the court proceeded to and entered interlocutory judgment against National Land Commission. To this end, learned counsel for the respondent has referenced page 170 of the Record of Appeal.

24. Regarding ground 6 of the memorandum of appeal, learned counsel for the Respondent has submitted that the trial court proceeded to and granted prayers that had been pleaded at the foot of the amended Plaint. To this end, it has been submitted that the respondent had indeed prayed for a declaration

that the acquisition of the suit property was illegal and unconstitutional. Furthermore, it has been contended that the respondents had also sought for compensation for compulsory acquisition.

25. Arising from the foregoing, learned counsel for the respondent has contended that the allegations underpinning ground 6 of the memorandum of appeal are misconceived and erroneous. For good measure, learned counsel for the respondent has reiterated that the award of Kshs.1,035,000 only was premised on the prayer seeking compensation for compulsory acquisition.

26. In the premises, learned counsel for the respondent has contended that the appeal beforehand is devoid of merits and thus same ought to be dismissed. To this end, learned counsel has invited the court to proceed and dismiss the appeal with costs. On the contrary, learned counsel for the respondent has invited the court to affirm the Judgment of the trial court.

27. Having reviewed the record of appeal, the evidence tendered [oral and documentary] and having taken into account the written submissions filed on behalf of the respective parties and upon consideration of the applicable law, I come to the conclusion that the determination of the subject appeal turns on two [2] key issues, namely; whether the respondent proved ownership of the suit property or otherwise; whether the compensation on account of [sic] compulsory acquisition was lawful and legally tenable or otherwise.

28. 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.

29. 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. 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:

> 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. 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."
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> [See also the holding in the case of County Assembly of Kwale and Others versus Dzilla [2024]KECA;and Doshi versus Justice Charles Chemutut and 7 others [2025] KECA]

30. Bearing in mind the principles espoused by the Court of Appeal in the decisions [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 respondent established his claim to ownership of the suit property or otherwise.

31. Regarding the first issue, it is imperative to recall and reiterate that it is the respondent who approached the court, contending that same [respondent] is the lawful owner and or proprietor of plot number 58 Timau [L.R No. 2890/254], namely the suit property. To this end, it was therefore incumbent upon the respondent to tender and place before the trial court plausible and cogent evidence to demonstrate that same was indeed the lawful owner of the suit property.

32. Additionally, it is the respondent who had contended that what is now the suit property was previously known as plot number 58 Timau. Moreover, the respondent contended that it is the same plot that mutated into the suit property upon survey.

33. Premised on the foregoing averments, one would have expected the respondent to tender and produce evidence demonstrating the allotment of plot number 58 Timau, compliance with the terms of the letter of allotment [if any], survey of the plot as well as the cadastral plan/map [if any], and all the attendant documents underpinning the ultimate issuance of the certificate of title.

34. However, there is no gainsaying that the respondent herein only tendered and produced a copy of the letter of allotment in respect of unsurveyed plot number 58 Timau but failed to tender and produced the part development plan [if any], the letter of acceptance [if any], the revenue receipt issued upon payment of the stand premium [if any], the cadastral plan, the Cadastral Map and the Grant leading to the certificate of title.

35. It is common ground that a letter of allotment is an offer by the government [through the commissioner of lands] to the allottee. To this end, the allottee is obligated to comply with the terms and conditions of the letter of allotment within the stipulated/circumscribed timelines. For good measure, the stipulated timelines are indicated to be 30 days from the date of the postmark.

36. Furthermore, it is not lost on me that where the terms and conditions of the letter of allotment are not met and or complied with within the stipulated timeline, then the letter of allotment lapses. In this regard, it was therefore incumbent upon the respondent to demonstrate that the term[s] of the letter of allotment underpinning his claim of ownership to and in respect of the suit property was complied with and or acted upon within the stipulated timelines.

37. Sadly, the respondent herein neither tendered nor produced the letter of acceptance of the terms of the allotment nor produced the revenue receipts [if any] demonstrating payments of the standard premium. Suffice it to state that in the absence of a letter of acceptance; and payment of the standard premium, the letter of allotment, which is being relied upon, died a natural death upon lapse of the stipulated duration. Same ceased to exist in the eye[s] of the Law.

38. To buttress the foregoing position, it suffices to reference the decision in Joseph Kamau Muhoro vs The Attorney General & another (2021) eKLR, where this Court stated as hereunder;

> 33. In my humble view, by the time the Plaintiff/Applicant herein was purporting to pay the stand premium and the annual rent, which were mandatory conditions to the letter of Allotment, the allotment in question was already extinguished and was thus incapable of attracting any payment and/or being activated whatsoever.
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> 34. Besides, I also hold the humble opinion that, having not formally accepted the Letter of Allotment, [in writing as required], the Letter of Allotment, on which the Plaintiff/Applicant has premised his claim, was rendered void and non-existent.

35. In support of the foregoing holdings, it is important to take cognizance of the Decision in the case of Dr. Syedna Mohammed Burhannuddin Saheb & 2 others vs Benja Properties & 2 others [2007] eKLR;

> In any event, the letter of allotment relied upon by the Defendant had itself expired, and was therefore invalid. I do not accept Mr. Kirundi, Counsel for Defendant's argument, that the expired letter, when acted upon, had been "revived" through conduct. The letter had expired. It was dead. There was nothing to "revive".

39. Moreover, the Supreme Court of Kenya [the apex Court] expounded on the legal position as pertains to a letter of allotment whose terms were not complied with in the case of Torino Enterprises Limited v Attorney General (Petition 5 (E006) of 2022) [2023] KESC 79 (KLR) (22 September 2023) (Judgment).

40. For coherence, the Court observed as hereunder:

> So, can an allotment letter pass a 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 Moijo 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].
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> 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.
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> 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 a 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 a 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.
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> 62. Back to the facts of this case, the allotment letter issued to Renton Company Limited was subject to payment of stand premium of Kshs 2,400,000.00, annual rent of Kshs 480,000.00, amongst others. Moreover, the letter was granted on condition that Renton Company Limited would accept it within thirty (30) days from the date of the offer, failure to which it would be considered to have lapsed.

41. Bearing in mind the dictum espoused in the case of Torino [supra] and taking into account that the respondent did not provide evidence of compliance with the terms of the impugned letter of allotment, what becomes apparent is that the letter of allotment lapsed before same was purportedly transferred to the respondent herein on the 4th of August 2000. For good measure, there was nothing capable of being transferred to the respondent at the foot of the purported form of transfer which was produced as exhibit P3.

42. Additionally, there is no gainsaying that a letter of allotment by and of itself cannot confer any legal rights to the bearer thereof. Furthermore, there is no gainsaying that the bearer of the letter of allotment cannot purport to transfer [sic] the rights underpinned by the letter of allotment. It then means that the transactions underpinned by the form of transfer were equally void.

43. Other than the fact that the respondent did not meet and or demonstrate compliance with the terms of the letter of allotment, there is also the issue that the respondent did not tender and or produce the approved development plan. It is instructive to observe that though the part development plan was alluded to as document number 2 at the foot of the list and bundle of documents dated 22nd September 2017, same was neither supplied nor produced before the court.

44. The importance of apart development plan [PDP] in the process of alienation of what was previously unalienated Government Land was highlighted 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).

45. For coherence, the court stated as hereunder;

> 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.

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..."

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.

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."

46. In the absence of a duly approved part development plan [PDP], it is not possible to ascertain whether the suit property that is being claimed by the respondent was indeed available for allotment in the first place.

47. Other than the foregoing, there is also the issue of survey of the suit property. It is the respondent who contended that plot number 58 Timau, mutated and became L.R No. 2890/254 upon survey. To this end, it was therefore incumbent upon the respondent to tender and produce before the court evidence of the cadastral plan [F/R]; Cadastral Map; Copy of the indent [if any] and confirmation from the directorate of survey that plot number 58 Timau became the suit property upon survey.

48. Be that as it may, it is not lost on me that the respondent did not tender and or produce any evidence to connect plot number 58 Timau to the suit property or at all. Suffice it to state that it was the duty of the respondent to demonstrate and or prove that what was allotted as plot number 58 Timau is indeed the plot underpinned by the certificate of title before the court.

49. To my mind, the respondent did not place before the court any evidence to demonstrate that the certificate of title relates to and concerns the plot that was [sic] said to have been allocated. For good

measure, a certificate of title can only arise from a lawful and credible process and not otherwise.[See the decision in the Case of Daudi Kiptugen versus The Commissioner of Lands and Another [2015] eklr; Mas Construction Company Limited versus Sheikh and Another [2025]KECA.]

50. Put differently, a certificate of title, which is an end product, can only be justified if the bearer thereof places before the court the transactional documents underpinning its root [namely, the process leading to its issuance]. [See 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) – paragraph 110 thereof].

51. I have read the judgment of the trial court and I have noted that the trial court put a lot of premium on the fact that the respondent was issued with a certificate of title in respect of the suit property. Furthermore, the trial court thereafter proceeded to and referenced the provisions of sections 24 and 25 of the *Land Registration Act*. However, the trial court does not appear to have engaged with the process leading to the issuance of the impugned certificate of title.

52. I beg to state that had the trial court correctly appreciated the evidence tendered, same would no doubt have come to the conclusion that there was a serious disconnect between Plot number 58 Timau and the suit property. Moreover, the trial court would have equally come to terms with the fact that the letter of allotment underpinning the ultimate issuance of the impugned certificate of title lapsed and ceased to exist in the eyes of the law.

53. Premised on the foregoing, I am constrained to and do hereby depart from the factual findings of the trial court. On the contrary, I find and hold that the respondent did not prove his claim to be the lawful and legitimate proprietor of the suit property. Further and in any event, there is no gainsaying that the doctrine of indefeasibility of title cannot, by and of itself, be relied upon to sanitize a certificate of title procured in a vacuum.

54. Turning to the second issue, namely; whether the suit property was illegally acquired, it is instructive to underscore that compulsory acquisition is a process underpinned by the law. Previously, compulsory acquisition was provided for under the Land Acquisition Act, Cap 295, Laws of Kenya [now repealed]. [see Sections 6, 7 and 19 thereof].

55. Currently, the process pertaining to compulsory acquisition is regulated by the provisions of sections 107 – 113 of the *Land Act* 2012; as read together with the Land [Compulsory Acquisition] Rules 2017. Suffice it to state that compulsory acquisition is undertaken by the national land commission on behalf of the acquiring authority. Furthermore, there is no gainsaying that it is National Land Commission that is obligated to pay out the compensation attendant to the compulsory acquisition and not otherwise. [See the decision of the Court of Appeal in Five Star Agencies Limited versus National Land Commission and Others [2024] KECA]

56. Flowing from the foregoing observation, it then means that where a party contends that the process of compulsory acquisition was irregularly and or illegally undertaken, then the suit, [if any] ought to be mounted against National Land Commission. In addition, there is no gainsaying that any compensation payable as a result of illegal acquisition can only be directed against National Land Commission. [See Five Star Agencies Limited & another v National Land Commission & 2 others (Civil Appeal E290 & 328 of 2023 (Consolidated)) [2024] KECA 439 (KLR) (12 April 2024) (Judgment).

57. Bearing in mind the holding of the court of appeal in the decision [supra], it is apparent that the judgment of the learned trial magistrate that condemned the appellant to pay [sic] the compensation arising out of compulsory acquisition was erroneous and misguided.

58. Other than the fact that compensation for compulsory acquisition can only be laid against the National Land Commission, there is also the issue that compulsory acquisition can only be undertaken in accordance with the law. In respect of the instant matter, the respondent did not tender and or produce before the court any evidence of compulsory acquisition. If anything, the respondents claim [subject to proof] was based on trespass and not compulsory acquisition. [See the decision of the Supreme Court in the case of *Attorney General v Zinj Limited (Petition 1 of 2020)* [2021] KESC 23 (KLR) (3 December 2021) (Judgment)]

59. Yet again, I beg to state that the learned trial magistrate did not appreciate the dichotomy between compulsory acquisition and trespass. Nevertheless, having found and held that the respondent did not prove lawful title to the suit property, the finding herein is superfluous.

60. Before concluding on this matter, there is one further/ incidental issue, which merit[s] mention and a short discussion. The issue relates to the monetary award made in favour of the Respondent. It is worthy to recall that the Respondent did not plead and/ or particularize any special Damages in the body of the Plain [Amended Plaint]. Having not particularized special Damages, there is no way the Learned Trial Magistrate could proceed to award the Respondent the sum[s] at the foot of [sic] the Valuation Report that was tendered before the Court. Suffice it to state that the Valuation Report was evidence that could only be anchored on some pleading[s] and not otherwise.

61. In short, it is my finding and holding that the monetary award was granted in the absence of pleading[s]. Same was granted in vacuum. It was an erroneous award. It was contrary the established and hackneyed principles of the Law. [See the decision[s] in the case of Kenya Power and Lighting Company Limited versus Capital Fish [K] Limited [2016] eklr; and Superior Homes Plc versus Water Resources Authority and Others [2024] KECA]

Final Disposition

62. Flowing from the analysis contained in the body of the Judgment, it must have become evident that the appeal beforehand is meritorious. Suffice it to posit that the appellant has established and proven that the Judgment and the consequential decree of the learned trial magistrate were premised on a misapprehension of the law and same was therefore erroneous.

63. 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 trial court be and is hereby set aside.

    III. In lieu thereof, the Respondent's suit in the subordinate court 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 are equally awarded to the Appellant.

64. It is so ordered.

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

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

JUDGE

In the presence of:

Mutuma – Court Assistant

Mr. Mutuma for the Appellant

Ms. Githinji holding brief for Mr. Mbaabu M’Inoti for the Respondent