

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ELC NO. 170 OF 2017

GEOFFREY YABUNA-----PLAINTIFF **LUTILO**

VERSUS

ANTHONY MUNENE-----1ST
DEFENDANT

LAND REGISTRAR, TRANS-NZOIA COUNTY-----2ND
DEFENDANT

THE ATTORNEY GENERAL-----3RD
DEFENDANT

JUDGMENT

1. By an amended plaint dated **19/2/2018**, the plaintiff in the primary suit sought:
 - (a) **Declaration that Plot No. Kitale Municipality Block 5/152 belongs to him.**
 - (b) **Order directing the 2nd defendant to forthwith register a lease issued in his favour by the Chief Land Registrar on 22/9/2017.**
 - (c) **General damages for trespass.**
2. The plaintiff contends that he is the sole proprietor of the suit land, following a lease certificate issued in **September 2017** and forwarded to the 2nd defendant by a letter dated **6/12/2017**, who, through

the influence of the 1st defendant, declined to collect the same from the G4S Courier services, for its registration, thus having it returned to the Chief Land Registrar's office.

3. The plaintiff terms the acts of the 2nd defendant high-handed, unlawful, and amounting to aiding the 1st defendant to acquire his property fraudulently. The plaintiff asks for an order directing the 2nd defendant to deregister the lease registered on **22/9/2017** and issue the same to him.
4. The 1st defendant opposed the suit through an amended defence and counterclaim dated **17/9/2025**. He denied knowledge of a lease certificate issued in **2017** by the 2nd defendant, other than the one forwarded to the 2nd defendant by a letter dated **10/9/2018**, which was the final registration and issuance of a lease to him.
5. The 1st defendant averred that upon presenting the same, it was declined due to the pendency of this suit. The 1st defendant states that even if the plaintiff had resented such letters or lease, the same letters and or lease were fake, not genuine, and comprised of machinations, and a product of trickery, ingenuity, and deceitfulness on the part of the plaintiff to

forcefully take over a suit property he knew belonged to the 1st defendant.

- 6.** The 1st defendant denies any alleged collusion with the 2nd defendant. The 1st defendant states that if the plaintiff was told that the alleged lease would not be registered, those facts were true, as the plaintiff never had any right over the suit property or interest, which the 2nd defendant had an obligation to register in his favour; otherwise, the 1st defendant is the genuine owner of the suit property.
- 7.** The 1st defendant avers that the plaintiff does not deserve the reliefs sought for his alleged false claim based on the certificate of lease or letters that are illegal, null, and void, in view of the vested documentation in his favour showing him to be the rightful and lawful owner of the suit property.
- 8.** Again, the 1st defendant avers that he has been in possession of the suit property since the year **1996**, where he has constructed a permanent perimeter wall around it, has building materials thereon, and has been using the suit property as a parking space for his Aturukan hotel visitors, over and above erecting a septic tank thereon.

- 9.** The 1st defendant avers that the plaintiff's acts are unlawful in so far as dealing with the suit property and shall seek damages for trespass and obstruction of his development property, when the plaintiff has no cause of action against him. The 1st defendant avers that the cause of action is founded on illegality and is an abuse of court process.
- 10.** In the counterclaim, the 1st defendant reiterates the contents of his amended defence. It is averred that the 1st defendant, having made an application for allocation of the suit property, was granted an allotment letter dated **5/1/1996**, which he accepted the offer by making the requisite payment as stipulated in the letter, and started paying land rates to the defunct municipal council of Kitale.
- 11.** The 1st defendant avers that the suit property referred in the letter of offer as "J" was still unsurveyed as per the Part Development Plan (PDP) prepared by the Director of Physical Planning (DPP), as initially forwarded to the Commissioner of Lands by a letter dated **27/12/1995**.
- 12.** The 1st defendant avers that upon seeing the PDP and the other relevant documents, commenced the survey of the suit property through a registered

surveyor, who presented the survey plan and a beacon certificate of the Ministry of Lands which corresponded with a letter of approval of the survey dated **20/4/2011**, whereupon the surveyor authorised for the amendment of the RIM by a letter dated **19/5/2011**, after which he paid the requisite government charges, paving way for the preparation of the amended RIM.

- 13.** The 1st defendant avers that following the progress made in obtaining the certificate of lease and having taken possession of the suit property with a view to utilising it, he applied to the defunct municipal council of Kitale for a permit to put up a wall fence, which was granted, and he paid the requisite fees. The 1st defendant avers that he also applied for authority to construct a sewer line to serve his hotel known as Aturukan hotel located across the road opposite the said property, which request was granted.
- 14.** The 1st defendant avers that all these activities took place uninterrupted or without a complaint from the plaintiff. The 1st defendant avers that his agent in Nairobi, now deceased, was also trying to assist him procure the lease in Nairobi and that in the year

2017, the plaintiff, in collusion with unknown land officers, manipulated the records of the lands office using a survey report made by his own surveyor and eventually procured a lease document in his favour without any colour of right over the suit property and which forwarded to the 2nd defendant vide a letter dated **22/9/2017**, for registration in favour of the plaintiff.

- 15.** The 1st defendant avers that upon learning of this intention, he wrote a letter dated **20/1/2017** to the Cabinet Secretary, Ministry of Lands and Physical Planning, complaining about the plaintiff's intention by the plaintiff to grab his land. Before the said complaint, the 1st defendant avers that the Director of Land and Administration had written a letter to the District Land Registrar dated **21/11/2017** to withhold the registration of the lease in favour of the plaintiff pending further investigation and a ground report, and by a letter dated **24/11/2017**, the office of the 2nd defendant returned the lease document to the Chief Land Registrar, Nairobi.
- 16.** The 1st defendant avers that the plaintiff further colluded with the Ministry of Lands and Physical

Planning officials, who issued the plaintiff with another lease for registration at Trans Nzoia registry, which registered it in favour of the plaintiff but later recalled it after his constant complaint to the 2nd defendant.

17. The 1st defendant avers that despite the pending suit and its orders restraining any dealings on the said land, and despite the 2nd defendant's refusal to register the plaintiff's lease, he learned with shock that the 2nd defendant had gone ahead to register the lease forwarded in favour of the plaintiff.

18. The 1st defendant avers that he has lodged many complaints over the alleged forgery and falsified documents, which led to investigations by government agencies whose reports show that the plaintiff either lied, forged reports, or was not the owner of the suit property, yet it is the 1st defendant who has genuine ownership documents. The 1st defendant sought through a counterclaim:

(a) Declaration that he is the rightful, legal, and lawful owner of Land Title No. Kitale Municipality Block 5/152.

(b) Invalidity of the lease certified issued to the plaintiff on 5/7/2019.

(c) Cancellation of the certificate of lease issued to the plaintiff on 5/7/2019.

- (d) Cancellation of the plaintiff's name from the lands register and subsequent rectification to reflect the 1st defendant as the legal owner and or sole proprietor of Kitale Municipality Block 5/152.**
- (e) An order for the issuance of a certificate of lease in his favour.**
- (f) Permanent injunction.**
- (g) General damages,**
- (h) Exemplary damages and costs.**

19. The 2nd and 3rd defendants opposed the primary suit through a statement of defence dated **17/9/2018**. They denied the contents of the amended plaint that the plaintiff was the genuine and bona fide owner or sole proprietor of the suit land, or he was duly issued with a certificate of lease for the same, or that the 2nd defendant was under the influence of the 1st defendant or declined to pick the lease register and insisted that the lease documents are not received by that mode but are collected in person from Ardhi House.

20. The 2nd and 3rd defendants term the suit as incompetent, bad in law, and fatally defective. The 2nd and 3rd defendants admit that the plaintiff signed the lease document and paid the requisite fee vide

receipt **No. 4976089** on **9/1/2017**, before the ground report was done. The 2nd and 3rd defendants aver that on **10/11/2017**, the Land Administrator visited the suit property and established that someone else other than the plaintiff was in occupation of the said suit property.

21. The 2nd and 3rd defendants aver that on **22/11/2017**, the 2nd defendant received a letter from the Director of Land Administration, Nairobi, requesting him to withhold the registration of the said lease and send it back to Nairobi, until the dispute was resolved, which they did by a letter dated **24/11/2017**. The 2nd and 3rd defendants aver that since then the plaintiff has never raised further issues on the said subject, and that it is not true that they were aiding the 1st defendant but acted as per the ground status report of the Land Administrator.

22. The court record shows that both the plaintiff and the defendants in the counterclaim were served with the amended defence and counterclaim, but did not respond to it. Thereafter, the 1st defendant filed an affidavit of service and a request for interlocutory judgment by a notice dated **14/10/2025**. The plaintiff in the counterclaim requested formal proof.

The 2nd defendant in the counterclaim was also served with the said documents on **24/9/2025**, but failed to respond despite extensions of time, as per the court record. The affidavit of service, sworn and signed by Pinto Nelson Atudo on **29/10/2025**, confirms that.

- 23.** Subsequently, at the formal proof, **Anthony Munene Kibetu** testified as **PW1** and relied on a witness statement dated **17/9/2025** as his evidence-in-chief.
- 24.** PW1 told the court that in **January 1995**, he was among the people who applied for allocation in the Kibomet area, to which the Ministry of Lands and Physical Planning issued him with a PDP for the plot adjacent to the junction of Kitale - Kapenguria road, by issuance of a letter of allotment dated **5/1/1996**, and followed as the processes as set out in his counterclaim, till he was issued with an amended RIM, paid rates as demanded on **6/4/2011**, received rates clearance certificate and upon successful subdivision, applied for a certificate of lease, paid **Kshs. 34,550/=** to have it processed on **14/2/2013**, paid annual rates to the county on **26/6/2013** for **Kshs. 21,259/=**, and has been utilising the land.

- 25.** In support of his claim, PW1 produced as exhibits an allotment letter dated **5/1/1995, P. Exhibit No. (1)**, letters dated **2/7/2010** and **19/5/2011, P. Exhibit No. (2)** and **(3)**, receipt dated **1/11/2011** by the Director of Surveys, **P. Exhibit No. (4)**, letters dated **5/12/2011, 21/11/2017, 24/11/2017,** and **20/12/2017** as **P. Exhibit No. (5) - (9)** respectively, beacon certificate, **P. Exhibit No. (10)**, RIM as amended, **P. Exhibit No. (11)**, and photographs as **P. Exhibit No.12(a), (b),** and **(c)**.
- 26.** PW1 also relied on a further list of documents dated **27/3/2019** and **16/10/2019**, which contains a Ministry of Lands and Physical Planning forwarded letter dated **10/9/2018** as **P. Exhibit No. (13)**,
- 27.** Similarly, PW1 relied on a copy of the certificate of lease dated **22/9/2017, P. Exhibit No. (14)**, a notice of intention to rectify the register dated **11/9/2019** as **P. Exhibit No. (15)**, a National Land Commission report dated **7/5/2018** as **P. Exhibit No. (16)**, a county government rates demand notice dated **26/6/2020**, as **P. Exhibit No. (17)**, payment receipt issued on **14/2/2013**, as **P. Exhibit No. (18)**, rates clearance certificate issued on **6/4/2011**

as **P. Exhibit No. (19)**, and a PDP dated **20/12/1998**, as **P. Exhibit No. (20)**.

- 28.** Though the 2nd and 3rd defendants were represented by Mr. Lotir, learned state counsel, he opted not to cross-examine the 1st defendant.
- 29. Suleiman Wande and Isaya Wanyonyi** testified as **PW2** and **PW3**. Both relied on witness statements dated **16/10/2019**. PW1 told the court that in **2002**, the 1st defendant was in the transport business, and thereafter, when he started constructing the Aturukan Hotel in **2010**, he employed him as a site manager. PW2 said that he would be sent by the 1st defendant to pay the land rate for all his plots, including the suit land, whose subdivision and beacons were made by the surveyor, one P.O. Adero, whom he witnessed, following which a beacon certificate was issued to him.
- 30.** PW2 said that eventually they commenced putting up a perimeter fence, which exercise was stopped by forest officers. PW2 said that later, government surveyors, accompanied by forest officers in **2022**, established the boundaries of the plot vis-à-vis KCC Kitale forest. PW2 confirmed visiting the Kenya National Highways Authority Eldoret office to acquire

a permit to construct a sewer line across the road between Aturukan Hotel and the suit land, which, upon issuance, he supervised its construction without any objection by anyone.

- 31.** PW2 said that around **2014**, he was issued a permit by the county to authorise the construction of a perimeter wall around the plot, which exercise took two months under his supervision with no objection to the same. PW2 said that in **2017**, a group of people came and started constructing an iron sheet fence outside the perimeter wall, which he made a report at Kitale police station, and were stopped from doing so by the OCS.
- 32.** PW3 told the court that he is one of the owners of plots in the area, with effect from **1996**, whose owners elected him as the chairman to spearhead the issuance of titles. PW3 confirmed that they engaged a private surveyor who came and surveyed the plots, opened a file, and submitted the work to the Director of Surveys, Nairobi.
- 33.** PW3 said that between **2011** and **2014**, he had planted maize for the whole block from **A-R**. He said that since the allottees had not developed their plots, they also allowed him to erect a semi-permanent

house next to the 1st defendant's plot. PW3 told the court that the first defendant continued with developments on the plot by the 1st defendant until **2017**, when the plaintiff started laying claim to the land.

- 34.** Upon closure of the 1st defendant's counterclaim, Mr. Atudo learned that counsel for the 1st defendant submitted that the evidence tendered overwhelmingly supported the contents of the counterclaim that the 1st defendant was lawfully allotted the land, followed all the necessary processes, and has been in uninterrupted occupation of the land since issuance of a letter of allotment.
- 35.** Learned counsel submitted that there is no contrary evidence to counter the said evidence and or oppose the counterclaim. Learned counsel submitted that there is no evidence from the keeper and custodian of land records that the plaintiff and the defendant in the counterclaim are a duly registered owner of the land or have superior rights to the 1st defendant over the suit land.
- 36.** Learned counsel submitted that the 1st defendant's allotment letter was issued on **5/1/1996**, accepted the offer, made the requisite payments earlier, unlike

the primary plaintiff, whose allotment letter is dated **24/6/1997**.

37. Learned counsel for the 2nd and 3rd defendants, Mr. Lotir, submitted that the 1st defendant's counterclaim is on a dispute that has not crystallised for his intervention by the Land Registrar. Learned counsel submitted that since it is the original plaintiff who brought the suit, the status quo as of pre-**2018** should revert, as learned counsel submitted that the state then was that the 1st defendant was both occupant and user of the suit property as of **19/2/2018**.

38. Further, learned counsel submitted that it is only fair that the 1st defendant continues using the suit land, since in law, when there are two letters of allotment, the first in time takes precedence.

39. The issues calling for my determination are:

(1) If the 1st defendant has proved his counterclaim.

(2) If the 1st defendant is entitled to the reliefs sought.

(3) What is the order as to costs?

40. Order 7, Rules 3 and 7 of the Civil Procedure Rules provide for a counterclaim. A counterclaim constitutes an independent claim requiring

prosecution. Even upon the dismissal of a primary suit for lack of a defence to the counterclaim, the plaintiff in the counterclaim has to tender evidence which must, on a balance of probabilities, satisfy the court to grant the reliefs sought.

- 41.** The discretion is always on the court to establish if a counterclaim can be tried within the main suit or not. See **Sol Electronic (K) Ltd & Others -vs- Raikundalia & Another Civil Appeal No. 384 of 2018 [2025] KECA 970 [KLR]**. Even when a plaintiff in the main suit fails to prosecute his claim, the court has to proceed with the counterclaim.
- 42.** In **County Government of Kwale & Others -vs- Rahimkhan & Others Civil Appeal No. 75 of 2020 [2023] KECA 302 [KLR]**, the court held that the counterclaim should have proceeded even after the plaintiff's suit was discontinued, unless the counterclaim was shown to be hopeless or unsustainable.
- 43.** The plaintiff, who was PW1 in the present counterclaim, pleads that he was first in time to obtain a letter of allotment, complied with all its terms and conditions, but was yet to obtain the final documents.

- 44.** He blames the defendants in the counterclaim for interfering with or tampering with the same, despite the ground report showing that he is the one in occupation of the land. The 1st defendant terms the documents held by the 1st defendant in the counterclaim as forgeries or lacking evidence of ownership of the suit land. The burden was on him to tender evidence on the alleged fraud, collusion, and the legality of his allotment letter and its superiority as opposed to the process by which the primary plaintiff obtained a certificate of lease.
- 45.** It is trite law that where there are competing claims over one parcel of land, each party must tender evidence to trace the root of their title. See **Munyu Maina -vs- Hiram Gathiha Maina [2003] eKLR.**
- 46.** In **Presbyterian Foundation -vs- Kibera Siranga Self Help Group Nursery School [2025] eKLR,** the court held that in tracing the root, a party must show the foundation of their titles, the description of the suit property, and the same must not cast doubts as to the authenticity of the title.
- 47.** In **Njanga -vs- Gaski Investment Ltd & Others Civil Appeal No. 519 of 2019 [2025] KECA 987 [KLR] (30th May 2025) (Judgment),** the court cited

Joseph Ng'ok -vs- Moiijo Ole Keiwua Civil Appeal. No. 60 of 1997, that title to land property comes into existence after issuance of a letter of allotment, meeting the terms and conditions of the same, and thereafter actual issuance of a title document.

48. The court said that, as held in **Pius Kimaiyo Langat -vs- The Co-operative Bank of Kenya Limited [2017] KECA 152 [KLR]** and **William Muthee Maina -vs- Bank of Baroda [2014] eKLR**, once the appellant did not comply with the terms and conditions of the letter offer, there was no contract over the said property between him and the Commissioner of Lands, making the suit property available for reallocation.

49. In **Kingori -vs- Karanja & Another Civil Appeal No. 71 of 2018 [2026] KECA 480 [KLR] (6th March 2026) (Judgment)**, the court said that a letter of allotment *per se* is nothing but an invitation to treat, which constitutes no contract, or interest in land until perfected by fulfilling the conditions stipulated therein. The court emphasised that where there is more than one letter of allotment, and one has culminated in the processing and registration of

title, the registered title would prevail, provided the holder can give a satisfactory account of the process leading to the acquisition of title. The court said that fraud must be specifically pleaded and proved, but not inferred from the facts. See **Vijay Morjaria -vs- Nansingh Madhusingh Darbar [2000] eKLR.**

- 50.** The court said that the sanctity of title to property under **Article 40** of the Constitution ensures that no person shall be arbitrarily deprived of his property, if lawfully acquired.
- 51.** Turning to the facts in this suit, the 1st defendant relies on an allotment letter dated **5/1/1996, P. Exhibit No. (1)**. It lacks the name of the county council and the PDP. An acceptance letter is missing. Other than **P. Exhibit No. (2)**, there is no record of authority to prepare the above-quoted PDP.
- 52. P. Exhibit No. (3) and (4)** are not clear if it refers to the same parcel of land as the one allocated in **P. Exhibit No. (1)**. In **P. Exhibit No. (9)**, the 1st defendant was alleging that the survey was approved and the plot number changed to **Kitale Municipality Block 5/152** as per the survey plan **FR 369/35**.

- 53.** The 1st defendant was complaining that the primary plaintiff had colluded and manipulated his records with the collusion of land officials at Ardhi House, Nairobi, in favour of the primary plaintiff to obtain title to his land. Other than these mere allegations, there is no evidence of the particulars of those perpetrators of the manipulation, and whether the 1st defendant, during the ministry investigations, was able to substantiate those allegations.
- 54.** The letter also states that the PDP used by the primary plaintiff was superseded on **22/12/1996**, by Plan No. **KTL.10.95.261. P. Exhibit No. (11)** has some missing details which are critical under the Survey Act. Evidence of payment of **Kshs. 28,142/=** as a condition precedent in the acceptance of the letter of offer, within **30** days of the issuance of the letter of allotment, is missing. The allotment letter for the plaintiff, dated **24/6/1997**, does not attach any PDP or refer to any plot number.
- 55.** On **27/11/2017**, the Director of Land Administration reports that, after thorough investigations, it had established that, according to its records, the plot was procedurally allocated to Geoffrey Lutilo Yabuna. The report confirms that the lease of the primary

plaintiff was lawfully processed and procedurally forwarded for registration to the 2nd defendant by a letter dated **22/9/2017**, rendering the 1st defendant's complaint invalid. Upon completion of the investigation, a letter dated **6/12/2017** was drawn forwarding the original lease document for registration to the 2nd defendant, without any further delay.

- 56.** Opiyo & Associates, who came up with Survey Plan **FR 369/35** in the name of the 1st defendant, said to have replaced the primary plaintiff's survey plan, was not called to testify and shed light or produce any correspondence regarding his survey works generally and in particular, contained in the computation file **59965**.
- 57.** In the 2nd and 3rd defendants' list of documents dated **17/9/2018**, there is a comprehensive report by the National Land Commission dated **7/5/2018** regarding the suit property. In a further list of witnesses dated **27/3/2019**, the 1st defendant had indicated P.N. Osoro as one of his witnesses.
- 58.** In a replying affidavit sworn on **12/7/2019**, the primary plaintiff attached a certificate of lease dated **5/7/2019** for the suit property and a ground report.

At page **6**, it states that the plot was allocated procedurally to the plaintiff in File No. **296421** and that the letter of allotment of the 1st defendant was found to be a forgery.

- 59.** The report goes on to state that the payment receipt by the 1st defendant was found suspect, and the file quoted therein was from a different town and a different person. It states that the land officer involved had been suspended. The report recommended the registration of the lease in favour of the plaintiff. A letter dated **12/11/2018** cleared the registration in favour of the primary plaintiff.
- 60.** In the supporting affidavit sworn on **24/7/2019** in support of an application for an injunction, the 1st defendant had attached a copy of the certificate of lease, the ground verification report, and recommendations. The court issued a temporary injunction to stop the plaintiff and the 2nd defendant from encroaching on the land or interfering with any of the 1st defendant's developments thereof till the suit is heard and determined.
- 61.** The primary plaintiff thereafter filed a further list of documents dated **24/1/2020**, including the letter dated **18/9/2019**, the fresh inspection report dated

17/6/2019, and the letter of the Director of Land Adjudication dated **6/12/2019**. The secondary plaintiff, while aware of all their documents, which fault his root of title, relies on the same documents.

P. Exhibit No. (20) is a PDP that has missing vital details. The maker was not called to testify. The signature, date, and approval number are missing.

- 62.** The 1st defendant had also listed a DCI report for production, but failed to avail the same or call the maker to produce it.
- 63.** In the further list of witness statements and documents dated **13/6/2022**, the investigation in **2018** and **2019** by the Ministry of Lands over who is the genuine owner is also mentioned, leading to a finding that the plaintiff was the genuine owner, hence his issuance with a lease on **5/7/2019**.
- 64.** A certificate of search dated **17/7/2019** shows when the registration was completed. In the letter dated **6/12/2019**, the Cabinet Secretary, Ministry of Lands and Physical Planning, was notified of the registration, the outcome of the investigation, convicting of James Osoro in **October 2019** for bribery regarding the plot. The 1st defendant's lawyer's letter dated **22/10/2021** is also listed,

confirming the registration and cancellation of the 1st defendant's lease for being fraudulently obtained.

- 65.** Fraud refers to misrepresentation or concealment of material facts with the intention to deceive, cause injury to another, or make him act to his detriment. The law is that once an allottee meets the conditions in the allotment letter, the land is no longer available for allocation to any other person, as held in **Wreck Motors Enterprises & Others -vs- Commissioner of Lands & Others [1997] eKLR.**
- 66.** In **Kareng'e & Another -vs- Mbogo & Others Civil Appeal No. 52 of 2020 [2026] KECA 714 [KLR] (25th March 2026) (Judgment)**, the court cited **N.K. Ngok -vs- Moijjo Ole Keiwua & Others [1997] KECA 1 [KLR]**, that an allotment letter *per se* does not confer interest in land at all and cannot be used to defeat a title of a person who is the registered proprietor of the said parcel of land.
- 67.** The 1st defendant, through his counterclaim, seeks to be declared the true owner of the suit land, the cancellation of the title issued on **5.7.2019** in favour of the primary plaintiff on account of fraud or collusion, re-issuance of a certificate of lease under

his name, general and exemplary damages for trespass. Fraud must be specified, pleaded, and proved to the required standards. See **Arthi Highway Developers Ltd -vs- West End Butchery Ltd & Others [2015] eKLR.**

- 68.** Issuance of a title deed by a land Registrar is a solemn act that is presumed to have been undertaken in accordance with the law unless there is clear evidence to the contrary that is adduced as held in **KeNHA -vs- Shalien Masood Mughal & Others [2017] KECA 465 [KLR]**. A title deed can only become defeasible where fraud, misrepresentation, and procurement through corrupt means are proved, as held in **N.K. Ngok & Others -vs- Moiijo ole Keiwua & Others (supra)**.
- 69.** Particulars of fraud or misrepresentation must be proved on a burden higher than in ordinary suits, as held in **Kinyanjui Kamau -vs- George Kamau [2015] eKLR**. The 1st defendant has made general allegations of fraud, collusion, and misrepresentation between the primary plaintiff and the County Land Registrar. Allegations of fraud and collusion are serious accusations. They must be supported by tangible, credible, and reliable evidence pointing to

the guilty mind of the person it is levelled against. See **Kibathi t/a Osoro Chege Kibathi Advocates - vs- Mutsi Investments Ltd [2024] KECA 270 [KLR]**.

- 70.** In **Karenge & Another -vs- Mbogo & Others** (*supra*), the court said that mere allegations of fraud without cogent proof could not suffice to defeat the 1st respondent's title, considering that the Land Registrar's evidence that the title had been issued procedurally.
- 71.** The documents filed before the court by both the primary plaintiff and the 2nd and 3rd defendants show that after the investigations by the relevant authorities, the path leading to the issuance of a certificate of lease held by the primary plaintiff was found to be free of any doubts or break in the chain. It is the 1st defendant who pleads to the contrary and seeks to impeach that certificate of lease as fraught with illegalities. The burden was on the 1st defendants to impeach that title on account of fraud, misrepresentation, or illegality, based on credible and tangible evidence.
- 72.** Occupation and approved developments on the ground for long is what the 1st defendant relies on.

Without material on a justification of ownership that cannot be traced to the root of the title, from the allocating authority, the 1st defendant's claim is built on quicksand. The burden was on the 1st defendant to plead and prove the irregularities or illegalities in the process leading to the root cause taken in processing of the plaintiff's letter of allotment, until the issuance of the lease on **5/7/2019**, which the parent ministry, in their investigation report or process, overlapped or ignored.

- 73.** The responsible and the issuing authority of the letter of allotment, the lease, and the certificate of lease was the Ministry of Lands and Physical Planning, and not the 2nd and 3rd defendants, or the two defendants in the counterclaim.
- 74.** The role of the County Land Registrar was merely to register the lease sent to it by the issuing authority. It was not the allocating authority. The 1st defendant knew by the time he sought to amend the defence who was the allocating authority, issuer of the lease, and authorizer to the County Land Registrar to register the lease after the completion of the investigations.

- 75.** The 1st defendant has not challenged the investigations or the decisions leading to the directive to register the lease by way of judicial review. The 1st defendant has not availed a rival decision overruling the Director of Land Administration letters, the investigation reports, and their outcomes. The 1st defendant is merely holding a letter of allotment whose alleged primary source and allocating authority cast doubts on its issuance, leaving it without any legal foundation. The allocating authority has shaken the very substratum of the ownership documents held by the 1st defendant in favour of the primary plaintiff.
- 76.** The 1st defendant seeks declaratory orders and a permanent injunction against the primary plaintiff and the land registrar, who, as held above, is not the allocation authority. The law is that a permanent injunction is issued only when the rights of the parties have been settled. It is also settled law that an injunction would not be issued against the true owner. The 1st defendant has been unable to impeach the certificate of lease held by the primary plaintiff. Entry into the suit property and putting up of

developments thereon was not based on any valid legal documents.

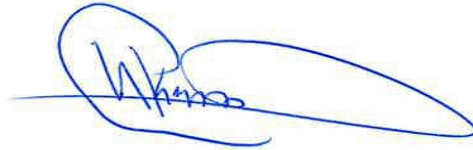
- 77.** The declaration orders sought by the 1st defendant cannot be issued without proof of valid and authentic ownership documents, with a clear root of title. Forceful entry and erection of developments thereon, without more, cannot justify or sanction the illegal acts on the suit land. A court cannot be used to perpetuate or sanction illegal entry, unapproved development, or put a seal of approval on or give legality to forged documents.
- 78.** The upshot is that the amended defence and counterclaim dated **17/9/2025** is found without merit. It is dismissed with no order as to costs.
- 79.** All the existing orders of injunction against the title register or stopping the plaintiff from entry into the suit land are hereby lifted.
- 80.** Orders accordingly.

Judgment dated, signed, and delivered via **Microsoft Teams/Open Court** at **Kitale** on this **6th** day of **May 2026**.

In the presence of:

Court Assistant - Dennis
Nyamu for the plaintiff

Atudo for the 1st defendant present
No appearance for the Attorney General
Plaintiff present

A handwritten signature in blue ink, appearing to be 'C.K. Nzili', written over a horizontal line.

**HON. C.K. NZILI
JUDGE, ELC KITALE.**

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