



Kigen & another (Suing as the Legal Administrators of the Estate of the Late Samuel KM Kigen-Deceased) v Nyoike & 3 others (Environment and Land Case 111 of 2018) [2025] KEELC 5551 (KLR) (23 July 2025) (Judgment)

Neutral citation: [2025] KEELC 5551 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT AND LAND CASE 111 OF 2018**

**CK NZILI, J
JULY 23, 2025**

BETWEEN

**JANE CHEPTOO KIGEN 1ST PLAINTIFF
DUNCAN KIGEN KORIR 2ND PLAINTIFF
SUING AS THE LEGAL ADMINISTRATORS OF THE ESTATE OF THE LATE
SAMUEL KM KIGEN-DECEASED**

AND

**NANCY GAKENYA NYOIKE 1ST DEFENDANT
THE COUNTY LAND REGISTRAR TRANS-NZOIA COUNTY 2ND
DEFENDANT
THE CHIEF LANDS REGISTRAR 3RD DEFENDANT
THE NATIONAL LAND COMMISSION 4TH DEFENDANT**

JUDGMENT

1. The plaintiffs approached this court through an amended plaint dated 24/4/2022, as the legal administrators of the estate of the late Samuel K.M. Kigen. It was deposed that the deceased was the lawful owner and or allottee of Plot No. Kitale Municipality Block 11/171, the suit land, situated at Milimani area, Kitale Town, which was allocated to him by the 3rd and 4th defendants, vide an allotment letter dated 3/12/1985, then known as plot No. 3. The plaintiffs averred that the deceased took possession of the suit land, established a home and also developed residential houses as well as other developments thereto.
2. The plaintiffs averred that before he passed on in September 2007, the deceased had visited the offices of the 3rd and 4th defendants in Nairobi, in pursuit of completion documents, which endeavours were



continued by the plaintiffs after his demise. The plaintiffs averred that the defendants knowingly and intentionally refused, failed and or neglected to release the documents and or instruments of transfer, but instead purported to release the same illegally and fraudulently, causing registration into the name of the 1st defendant, without the consent of the 1st plaintiff. As a result of the said illegal and fraudulent action or omission, the plaintiffs aver that they have been subjected to trauma, psychological torture, injury, loss, and damage for they have been deprived of the peaceful enjoyment of ownership, use, possession and development on the land.

3. The plaintiffs prayed for:
 - (a) Declaration that the issuance of leases and subsequent registration of Kitale/Municipality Block 11/171 was fraudulent, unprocedural, illegal, null and void and that the plaintiffs are the legal owners or allottees thereof.
 - (b) Declaration that the adjustments and or switching or repositioning of the map and plan of the subject parcel from its original plan to the subsequent one is illegal and unjust.
 - (c) Mandatory injunction to compel the 2nd, 3rd and 4th defendants to amend the register to parcel No. Kitale/Municipality Block 11/171, to delete the names of the 1st and 2nd defendants and register the plaintiffs as the legal owners in trust for the beneficiaries of the estate of the late Samuel K.M. Kigen.
 - (d) Permanent injunction to restrain the 1st defendant, his agents, servants or employees, from trespassing, building, fencing, entering into, leasing out, selling, or in any way whatsoever interfering with the plaintiffs' quiet and peaceful occupation, use and enjoyment of parcel No. Kitale/Municipality Block 11/171.
 - (e) Damages.
4. The 1st defendant opposed the suit by a statement of defence and counterclaim dated 31/1/2019, stating that the allotment letter dated 3/12/1985 is for Plot No. Kitale Municipality Un-surveyed Plot No. 3, which is unrelated to Plot No. Kitale/Municipality Block X1/171. The 1st defendant averred that the plaintiffs have fraudulently entered the number "171" by hand on the letter of allotment, which insertion was not entered by the Commissioner of Lands.
5. The 1st defendant averred that the alleged letter of allotment was issued on 3/12/1985, but the 1st plaintiff's deceased husband failed to meet the conditions set out in the allotment letter and the plot thus became available for allocation; otherwise, it is denied that the deceased had taken possession of the suit land as alleged or at all. Further, the 1st defendant denied that she fraudulently became registered as the proprietor of the suit land; otherwise, she was lawfully and properly registered as the absolute owner of the land.
6. The 1st defendant averred that she duly applied for allocation of the plot, was issued with an allotment letter dated 19/6/1997; accepted the offer and duly paid the requisite amount by a letter dated 7/1/1996; a receipt was issued by the Commissioner of Lands; a formal letter to amend the RIM was issued, which amendments were confirmed by the Director of Surveys; a rent clearance certificate was issued to her; a lease was prepared and subsequently a certificate of the lease was issued on 16/11/2018.
7. By way of a counterclaim, the 1st defendant averred that she is lawfully entitled to full use and possession of Plot No. Kitale/Municipality Block X1/171; otherwise, the plaintiffs have no proprietary right over the suit land and are unlawfully occupying the same. She sought an order of eviction of the plaintiffs, their servants and or agents, from Plot No. Kitale/Municipality Block X1/171 and demolition of all illegal structures thereon.



8. The 2nd, 3rd and 4th defendants opposed the suit through a statement of defence dated 3/5/2019. It was averred that the late Samuel K.M. Kigen applied for and was allocated land parcel Kitale Municipality Unsurveyed Plot No. 3 on 3/12/1985 with Ref. No. 20098/XV111/34 and a file opened as Ref. No. 116679.
9. The 2nd, 3rd and 4th defendants aver that the area allocated to the plaintiff vide the allotment letter was re-planned and a fresh allotment letter issued with file Ref. No. 116678/9 dated 1/10/1991, and upon a new survey being done, the plot was issued with a new number as Kitale/Municipality Block X1/171.
10. The 2nd, 3rd and 4th defendants averred that the suit was premature, frivolous, mischievous, scandalous, groping in the dark, untenable and an abuse of the court process, for the issue was being investigated by the Lands Office, Nairobi, to ascertain the actual ownership of the suit land. The 2nd, 3rd and 4th defendants denied the serialized fraud or illegalities. It was averred that after a thorough and lengthy investigation by the National Land Commission, it was found that the suit land belonged to the 1st defendant and it recommended that she be registered and issued with a certificate of lease.
11. The 2nd, 3rd and 4th defendants averred that the allocation, registration and issuance of title to the 1st defendant were well within the set procedure and the law. The 2nd, 3rd and 4th defendants averred that a caveat was lodged upon registration and issuance of a certificate of lease, pending investigation on the persisting issue of ownership and the said investigation is still ongoing; otherwise, the plaintiffs' suit is untenable in law and fact.
12. The 4th defendant opposed the suit through a statement of defence dated 28/2/2023. It is averred that the 4th defendant has no documents on the actions of the former Commissioner of Lands, as the Ministry of Lands and Physical Planning is the sole custodian of those records; otherwise, the allegations made are above their mandate, for they do not direct the 2nd or 3rd defendants on registration of private parcels of land.
13. In reply to the defence and defence to counterclaim dated 8/5/2019, the plaintiffs insisted that the allotment letter dated 3/12/1985 was accepted and paid for. Again, the plaintiffs averred that an official search certificate had confirmed that Kitale/Municipality Block X1/171 and Kitale/Municipality Block 1/171 are the same, fraudulently registered in the name of the 1st defendant, despite protests and proof of another owner, Samuel K.M. Kigen.
14. As to the defence to the counterclaim, the plaintiffs averred that the 1st defendant was not entitled to the reliefs sought, since she illegally and fraudulently acquired registration and title to the suit land, as the plaintiffs had been denied registration, yet the land belongs to the late Samuel K.M. Kigen.
15. The plaintiffs filed a reply to the 2nd, 3rd, and 4th defendants statement of defence dated 28/5/2019. It was averred that the alleged re-planning and issuance of fresh numbers which is denied, was malicious, fraudulent, unprocedural and a creation of the defendants, in collusion with and for the benefit of the 1st defendant, in total disregard of the plaintiffs' known interest, and was done without their notice, despite their long occupation of the suit land.
16. The plaintiffs averred that if any investigations, which is denied, were commenced after this suit was filed, would not be prejudiced by the suit. The plaintiffs averred that the purported allotment, registration and issuance of title to the 1st defendant as owner were unprocedural, fraudulent, malicious and illegal.
17. At the trial, Jane Kiptoo Kigen testified as PW1. She relied on a witness statement dated 13/12/2018 as her evidence-in-chief. PW1 told the court that the late Samuel K.M. Kigen was lawfully allocated plot No. Kitale/Municipality Block 11/171. After successfully applying for the same vide letter dated



- 3/12/1985, PW1 said that the deceased accepted the conditions and paid the requisite fees, took possession and developed the premises, where they have lived to date.
18. PW1 said that the plot was neither re-planned, re-surveyed, subdivided, reallocated, nor was it sold to the 1st defendant. PW1 said that her late husband built residential houses, planted trees, put up a fence and other domestic structures on the suit land. Further, PW1 said that her late husband continued paying charges, fees and land rates for the Plot, due to the County Government of Trans Nzoia.
 19. PW1 told the court that before the demise of her husband, he had made several visits to the Lands Office, Nairobi, for issuance of the certificate of lease, but to no avail, and upon his demise, the 2nd plaintiff equally made a follow-up but was ignored, denied access to the file and sent away without any assistance. PW1 said that during the tenure of the previous Land Registrar, three lease certificates were sent to her for registration and issuance, but they were all returned to Nairobi because they were not genuine.
 20. PW1 said that by a letter dated 12/11/2018, the Land Registrar was directed from Nairobi to proceed with registration of the lease of the suit land, without any further delay. PW1 said that even when she presented her application for registration for caution, her application was rubbished away by the registrar, saying it was a letter from a mere chief, and proceeded to register a lease.
 21. In addition, PW1 said that the defendants colluded to illegally dispossess them of their rightfully acquired property in favour of the 1st defendant for no reason at all; hence the reason she has come to court for the protection of her rights and those of the estate of her deceased husband, who had never suspected anything amiss. That the 1st and 2nd defendants have never been anywhere since the allotment was made, yet the defendants withheld all the information instead of being honest custodians of such records disclosures.
 22. PW1 relied on a copy of letters of administration Ad Litem dated 6/12/2018, death certificate, allotment letter dated 3/12/1985, area map, payment receipts dated 8/4/1987, payment receipts dated 13/3/2014, 9/12/2025 and 23/6/2016, clearance certificates dated 15/6/2010 and 23/8/21016, letters dated 12/8/2018 and 20/11/2018, caution form dated 16/11/2018, payment receipts dated 30/11/2018, report dated 19/10/2016, demand notice dated 23/11/2017, letter of acceptance dated 8/4/1987, beacon certificate dated 9/3/1990, official search certificate dated 4/9/2018 and 29/11/2018, letter dated 19/8/2014, copy of lease certificate dated 26/9/1996, lease certificate dated 6/10/2018, copy of plan, bundle of payment receipts land rent, demand notices, allotment letter dated 26/9/1997, letters dated 20/8/2014, 16/9/2014 and 18/9/2014, as P. Exhibit Nos. 1 – 30, respectively.
 23. In cross-examination, PW1 confirmed that her late husband had no lease certificate or title deed for Kitale Municipality Block 11/171, even though he had paid the requisite fees in 1987 for Kshs.6,000/= for the allotment letter. PW1 said that the payment was to be made within 30 days of the issuance of the letter of allotment; otherwise, the offer would lapse.
 24. According to PW1, the offer letter was to expire on 3/1/1986, though the payments were made and accepted by the 3rd and 4th defendants after 2 years. PW1 said that she visited the office after receiving the eviction order in 2018; otherwise, in all the other visits, the lands office had failed to issue her with the certificate of lease or title or communicate the reasons for not effecting the transfers. PW1 said that she could not tell who had allegedly inserted the plot number by hand in the letter of allotment. PW1 said that she has been on the land since 1985 to date, with full knowledge of the defendants and at no time was she notified of any changes, ordered to vacate and or made aware of any adverse interests.
 25. Duncan Korir, Charles Kigen, Esther Kipchumba Chebioga and Silvester Wamalwa, Ruth Lagat, Alice Mokeria, and John K. Lagat, all testified as PW2 - 8. They relied on witness statements dated



- 13/12/2018, 23/5/2024 and 8/5/2019 as their evidence-in-chief. PW2, as the 2nd plaintiff, associated himself with the evidence of PW1. He said that the suit land was allocated to his late father while he was 10 years old and had lived on thereon until the filing of the suit. PW2 said that from the letter of offer, the land could revert to the Settlement Fund Trustees if no payment was made within 30 days of the offer. PW8 on his part confirmed accompanying the deceased to the land office in 2018.
26. Nancy Gakenia Nyoike testified as DW1. She relied on a witness statement dated 1/11/2021. DW1 told the court that she was issued with an allotment letter dated 19/6/1997, Ref. No. 2089/XXX10 for Kitale Municipality Block X1/171, measuring 0.01069 Ha, requiring her to pay Kshs,43,418/=. She said she paid for the same and was issued with receipt No. 4350350. DW1 stated that she also wrote an acceptance letter dated 7/1//2016, and on 8/1/2016, the Lands Office wrote to the Director of Surveys to amend the RIM. DW1 said that the Director of Surveys complied and confirmed having amended the RIM by a letter dated 18/4/2016. PW1 said that she was eventually issued with a land rent payment request dated 13/5/2016, which she paid, and was issued with a lease document on 13/5/2016, which was forwarded to the Land Registrar Kitale, who duly registered the same.
27. Further, DW1 said that she was issued with a certificate of lease on 16/11/2018. She admitted being aware that the plaintiffs had complained to the Lands Office, Nairobi, in 2018, claiming superior interests on the suit land. Out of the complaints, DW1 said that she was aware that the Cabinet Secretary, Ministry of Lands, took action and investigations were conducted, establishing that the plaintiffs' parcel of land was separate; otherwise, her title was not fraudulently acquired.
28. DW1 relied on a letter dated 7/1/2016, acceptance letter, payment receipt dated 8/1/2016, letter dated 8/1/2016 and 18/4/2016, rent clearance certificate dated 23/3/2016, land rent payment receipt dated 23/3/2016, letter dated 13/5/2016, lease document executed on 16/11/2018, certificate of lease dated 18/11/2018 and ground inspection report by the 4th defendant as D. Exhibit Nos.1 – 11, respectively.
29. In cross-examination, DW1 said that she acquired the suit property after applying for the allocation in 1997, to which she was granted an allotment letter dated 13/6/1997, D. Exhibit No. 1, which appeared to be incomplete. DW1 said that she paid for the same as per D. Exhibit Nos. 2 and 3 in 2016, which was close to 20 years after the letter of offer was made. She admitted that the plaintiffs are the ones who have been on the suit land, hence the request for an eviction order and the demolition of the developments therein. DW1 said that she had nothing to show that the letter of offer of Samuel K.M. Kigen was recalled, revoked, withdrawn, or cancelled. DW1 confirmed that she had never lived on the suit land.
30. Jared Sharon testified as DW2. Relying on the ground verification report by the 2nd, 3rd and 4th defendants, she told the court that the 1st defendant was the one who was issued with a certificate of lease on 13/5/2016, following instructions from Nairobi, after being recommended by the ground verification report.
31. DW2 confirmed that the land registrar was ordered to register the lease. As to the re-surveying or re-planning of the suit land as captured in page 4, D. Exhibit No. 11, DW2 said that it was a normal occurrence, meaning that the land was no longer available to the plaintiffs. DW2 produced the ground verification report as D. Exhibit No. 12, letters dated 12/11/2018, 13/5/2016, 27/7/2017, 12/7/2017, 6/12/2017, 22/8/2017, 1/10/2018, 8/1/2018 and 27/11/2019 and map as D. Exhibit Nos. 12 - 22 respectively.
32. Further, DW2 said that from her office records, land parcel No. Kitale Municipality Block X1/171 indicates the owner as the 1st defendant. DW2 said that all the necessary procedural steps were taken before the 1st defendant was issued with a certificate of lease, after due diligence was undertaken. DW2 could not ascertain what necessitated the re-planning or re-surveying captured in the ground



verification report. DW2 could not tell if the parties that had been affected by the re-survey or re-planning, including the plaintiffs, were ever notified, informed, or involved in the process and of its outcome. DW2 said that she had not come across any document from the National Land Commission, recalling, revoking and or cancelling the plaintiffs' letter of allotment, nor could she determine the validity of the allotment letter.

33. DW2 said that the ground verification report was prepared by the 4th defendant; otherwise, she had not come across an allotment letter that was issued to the 1st defendant. DW2 confirmed that during the re-planning or the re-surveying, it appeared that the plaintiffs' plot was moved to some other place, hence the reason that there was a recommendation for re-allocation. DW2 said that a certificate of lease could not have been generated without the concurrence of the senior planning records officer.
34. The 1st defendant relies on written submissions dated 26/6/2025. It is submitted that the documents relied upon by the plaintiffs relate to Kitale Municipality Unsurveyed Plot No.3, and the insertion of No. 171 on the letter of allotment was not an official entry but a fraudulent one, to try and create an impression that the allottee was entitled to plot No. 171. It is submitted that other than the letter of allotment, the deceased was never issued with a lease and subsequently a certificate of lease.
35. On the other hand, the 1st defendant submits that she produced a paper trail containing an allotment letter dated 19/6/1997, up to a ground verification report and a file status. The 1st defendant submits that her title is covered by Sections 24 and 25 of the Land Registration Act. Reliance is placed on *Torino Enterprise Ltd -vs- Attorney General* Petition No. 5 (E006) of 2022.
36. The 2nd and 3rd defendants rely on written submissions dated 18/7/2025. It is submitted that fraud and illegality pleaded against them were not proved to the required standard as held in *Central Kenya Limited -vs- Trust Bank & 4 Others*, Nairobi Civil Appeal No. 215 of 1996, *Ndolo -vs- Ndolo* [2008] 1KLR (a-f) 742, and *Rosemary Wanjiku Muriithi -vs- George Maina Ndinwa*, Nyeri Civil Appeal No. 9 of 2014 [2014] eKLR. The 2nd and 3rd defendants submitted that they are being dragged to this cause of action for no reason, yet the allocation, survey and registration of Kitale Municipality Block 11/171 complied with statutory and procedural requirements and that the plaintiffs failed to prove how their rights were violated or that the 2nd and 3rd defendants abused their office. Lastly, the 2nd and 3rd defendants submitted that the reliefs sought by the plaintiffs are unwarranted.
37. The court has carefully gone through the pleadings, evidence tendered and the written submissions. The issues calling for my determination are:
 - a. If the plaintiffs have proved that the deceased was allocated the subject land and fully complied with the terms and conditions thereof on time or at all.
 - b. If the 2nd, 3rd and 4th defendants colluded with and or maliciously, fraudulently, illegally and unprocedurally failed, refused, or neglected to register, issue and or effect the completion of the allocation process in favour of the deceased, but instead maliciously switched the drawings and maps in favour of the 1st defendant.
 - c. Whether the plaintiffs, as a result of the 1st, 2nd, 3rd and 4th defendants' acts of commission and omission, suffer any loss, damage, or deprivation of the right to land.
 - d. If the plaintiffs are entitled to the reliefs sought.
 - e. If the 4th defendant has a valid counterclaim, which it has proved and is entitled to an order of eviction.
 - f. What is the order as to costs?



38. It is trite law that parties are bound by their pleadings and issues for the court's determination flow from the pleadings. A party may not travel outside his or her pleadings. A cause of action is defined as an act on the part of the defendant that gives rise to a cause of complaint to the plaintiff. See *D.T. Dobie & Company (Kenya) Limited -vs- Joseph Mbaria Muchina & another* [1980] KECA 3 (KLR). The plaintiffs' cause of action is that the late Samuel K.M. Kigen was issued with an allotment letter by the then 3rd and 4th defendants on 3/12/1983 for Kitale Municipality Block 11/171, took vacant possession, developed a home therein, as well as residential houses, erected a fence and other domestic structures and has lived thereon, though awaiting the necessary instruments of transfer till the initial allottee passed on, only for the 3rd and 4th defendants to knowingly, intentionally release and subsequently register the land in the name of the 1st defendant. The plaintiffs term the acts of the defendants as fraudulent, illegal, unprocedural and irregular, with the intention of depriving the estate of the deceased the right to peaceful enjoyment, use, possession and occupation of the suit property and its developments. In support of the suit, the plaintiffs rely on an allotment letter dated 3/12/1985. The property is described as Kitale Municipality Unsurveyed Plot No. 3, measuring 0.210 Ha.
39. The attached plan was produced as P. Exhibit No. 4. It was subject to formal acceptance in writing within 30 days from the date of the letter. The Ref. No. is 20089/XV111/34. The plan is incomplete. One cannot tell if it is a Deed plan. It has no reference. The is not indicated. The source is not clear. An acceptance letter within 30 days of the offer is missing. P. Exhibit No. 5 is a receipt for payment of Kshs.6,690/=, made on 8/4/1987. P. Exhibit Nos. 8-11, 13, 14, 15.
40. In *Sehmi & another -vs- Tarabana Company Limited & 5 others* (Petition E033 of 2023) [2025] KESC 21 (KLR) (11 April 2025) (Judgment), the court held that under the current legislation following repeal of the Registration of Titles Act, a certificate of title is to be regarded by courts as prima facie evidence that the person named therein is the absolute and indefeasible owner of the land, but such right to property does not extend to any property that has been found to have been unlawfully acquired as per Articles 40(1) and (6) of *the Constitution*.
41. The court cited *Dina Management Ltd -vs- County Government of Mombasa & Others* [2013] KESC 30 [KLR], that a title or lease is an end product of a process and if the process was followed prior to issuance of the title did not comply with the law, then such title cannot be held as indefeasible. What the plaintiffs have is only a letter of allotment. A letter of allotment has been said to be a mere invitation to treat that confers no title to land unless perfected.
42. In *Nelson Kazungu Chai & Others -vs- Pwani University* [2014] eKLR, the court held that under the repealed Government *Land Act*, a part development plan must be drawn and approved by the Commissioner of Lands or the Minister for Land before an un-alienated government land could be allocated, followed by a letter of allotment based on the approved part development plan. The court held that it is only after issuance of an allotment letter and compliance with the terms could a cadastral survey be conducted for issuance of a certificate of lease. The court cited *African Line Transport Co. Ltd -vs- Attorney General, Mombasa* HCCC No. 276 of 2013, that planning comes first, then surveying follows. The court said that a letter of allotment has to be accompanied by a part development plan with a definite number, which are then taken to the Department of Survey, who undertake the surveying, refer the same to the Director of Surveys for authentication and approval and then a land reference number is issued in respect of the plot. In *Funzi Development Ltd -vs- County Council of Kwale* [2014] eKLR, the court observed that a registered proprietor acquires an absolute and indefeasible title if, and only if, the allocation was legal, proper and regular. Again, in *Munyu Maina -vs- Hiram Gathiba Maina* [2013] KECA 94 9KLR] (10th December 2013) (Judgment) and in *Elizabeth Wanjiru Githinji & Others -vs- Kenya Urban Roads Authority* [2019] eKLR, the court held that when the root of title is under challenge, it is not enough to wave the instrument of title that is



under challenge without going behind it to show that the acquisition was legal, formal and free from any encumbrances, without those not noted in the register.

43. In *Torino Enterprises Ltd -vs- Attorney General* (supra), the court observed that an allotment letter was incapable of conferring interest in law, being both more than an offer awaiting the justification of conditions specified therein. The court held that an allottee, has to perfect the same by fulfilling the conditions therein, including paying the standard premium and ground rates within the prescribed timelines. The court held that unless an allottee acquires title to the land through registration under the applicable law, an allottee would have no good title to pass to a third party. The court held that it is the act of registration that confirms a transferable title to the registered proprietor.
44. The plaintiffs, though they admit that they had not acquired title, argue that they had paid the requisite fees albeit late, which the 2nd, 3rd and 4th defendants acknowledged receipt, they had visited the lands offices severally for the title document; and above all, there was re-planning, re-surveying and re-issuance of another letter of allotment, lease and certificate of lease without notification or consultation, yet the defendants knew that they have been in possession of the suit land since 1985.
45. In *Commissioner of Lands -vs- Kunste Hotel* [1997] eKLR, the issue was whether the Hotel Kunste should have been consulted. The court held that the exercise of statutory rights under the Government Lands Act (repealed), clearly affected the legal right of Kunte Hotel Limited and being a fundamental power, it was obliged to hear all those who were likely to be affected by the decree before deciding to allot the plot to the interested party.
46. In this suit, there is irresistible evidence that the plaintiffs had paid Kshs. 6,690/= to the 3rd and 4th defendants' predecessors. The letter of allotment of 1985 had not been recalled, invalidated and or the plaintiffs given notice of repossession of the plot for non-compliance with the terms and conditions of the letter of offer. There is evidence from D. Exhibit No. 11 that there was re-planning and resurvey of the plots. DW2 said that she was not certain if the persons to be affected by the re-planning and re-survey were notified. There is also evidence that the 1st defendant did not visit or undertake due diligence before the plot was allocated to her; otherwise, she could have established that there was a person in occupation of the suit land contrary to an earlier letter of allotment. There is no evidence that the plaintiffs were given a notice for repossession of the land or for vacant possession following the revocation of an earlier allotment letter or re-allocation of the land to the 1st defendant.
47. The plaintiff testified that they met the terms and conditions of the offer letter and therefore, the suit land was not available for reallocation. In *Rukaya Ali Mohamed -vs- David Gikonyo Nabacha* HCCA 9 of 2004, the court held that once an allotment letter has been issued and an allottee has met the conditions, the land in question is not available for allotment. D. Exhibit No. 11 shows that the letter of allotment Ref. No. 2089/XXV11/34 dated 3/12/1985 was found genuine and its file No. 116679 existed. The report shows that the area was re-planned and a fresh letter of allotment, Ref. No. 116679/9 dated 1/10/1997 issued superseding the earlier allotment. By that time, the deceased had already paid Kshs.6,690/=, as per the earlier allotment letter. It is not clear who was issued with the fresh letter of allotment. D. Exhibit No. 11, the report, shows that the plot is fenced with a life fence, barbed wire and has temporary structures.
48. The evidence of occupation on the ground and the development thereon is corroborated by PW 1 - 8. There is evidence that the District Land Registrar had also declined to register the lease to the 1st defendant due to the plaintiffs' claim. The lease was only registered after the letter dated 12/11/2018 was issued to the District Land Registrar. The letter by the permanent secretary did not address the issue of whether the earlier allotment letters dated 1985 and 1991 had been related or not, in view of D. Exhibit No. 14.



49. D. Exhibit No. 17 shows that the registration occurred so as to taste the waters. Coming to the defendants' exhibits, D. Exhibit No. 1 is dated 19/6/1997. The attached map is not a part development plan. It is not certified. D. Exhibit No. 2 is a letter dated 7/1/2016, before the allotment letter was issued. The date of receipt by the lands secretary is unclear. Payment of Kshs.43,518/= was made on 8/1/2016, before the allotment letter was issued.
50. Similarly, D. Exhibit No. 4 is dated 8/1/2016, before the allotment letter was issued. It refers to an allotment letter dated 19/6/1997. The letter is not certified. D. Exhibit No. 5 is dated 18/4/2016, long before the offer letter was prepared. The rent clearance certificate is dated for the period up to 31/12/2016, before the allotment letter was issued. The same case applied to D. Exhibit No. 7. It is dated 23/3/2016. D. Exhibit No. 8 predates the allotment letter. The lease does not refer to any RIM number or deed plan number.
51. The formula for unlocking such a dispute is to get to the root of the title as held in Hubert L. Martin & Others -vs- Margaret Kamar & Others [2016] eKLR. The question is, who among the two parties has displayed a better title? Acceptance of the letter of offer, accompanied by a copy of a bank cheque or original receipts, before the expiry of the letter of offer is key. A part development plan or deed plan with a number and land reference number is key. A survey plan is also key since the court has been told that there was re-surveying and re-planning.
52. In Arthi Highway Developers Ltd -vs- West End Butchery Ltd & Others [2015] eKLR, the court held that between West End Butchery and Arthi Highway Developers, none had a valid title as the one exhibited by Arthi was identifiably fake.
53. I have found that the paper trial of the defendants has gaps. The PDP does not have a reference or the name of the person who drew it. The 1st defendant and the rest of the defendants have not cleared those gaps. The green card as well as the white card have not been produced. An application for the land by the 1st defendant is lacking. The burden of proof was on the defendants to show that the letter of offer dated 1985 and 1991 was recalled or revoked and the plot was regularly obtained from the 1st allottee on account of default for re-allocation. Stamp duty payments by the 1st defendant are missing. The allocating authority has not challenged receiving payment from the plaintiff's late husband or father in 1987. The allocating authority has never repossessed the plot from the plaintiffs.
54. The PDP held by the 1st defendant lacks an approval number and stamp from the Commissioner of Lands. It has no signature. All these anomalies cannot afford the 1st defendant the protection of the law under Article 40 of *the Constitution* and Sections 24, 25 and 26 of the *Land Registration Act*. The court cannot sanction an illegality. Flouting the law on repossession of plots and allocation and infringing on the rights of the plaintiffs who were in possession cannot be condoned. Equity will not assist lawbreakers.
55. Courts frown on non-compliance with the law. See Sharok Kher Mohamed Ali & Another -vs- Southern Credit Bank Corp. Ltd [2008] eKLR. In Waterfront Holdings Ltd -vs- Kandie & Others Civil Appeal 88 of 2019 [2013] KECA 1223 [KLR] (6th October 2023) (Judgment), the court held that mere issuance of a title does not confer indefeasibly of title and that a court would not hesitate to nullify titles in case where the process of acquisition of the land is under challenge. The court was faced with two allotment letters cited Benjo Properties Ltd -vs- Syedna Mohamed Sahed & Others [2015] eKLR, that an allotment letter of interest is a transaction in rem attached to and running with a specific parcel of land. The court held that the second letter of allotment to the appellant did not attach to any land, since there was no parcel upon which the allotment letter could attach. The court said that the



- first allotment letter to the appellant made the suit property unavailable for allotment to the appellant, more so when the first allottee had fulfilled the terms and conditions of the allotment
56. In Kenya Ihenya Company Ltd & Another -vs- Njeri Kiriba [2019] eKLR, the court held that since the respondent was first in line and completed making payment in 1983, while the 2nd appellant paid in 1997, the first in time prevailed. When the equities are equal, the first in line prevails, as held in Lukwago -vs- Kizza & Another [1999] 2 EA 142.
57. In the premises, I find that the suit land was not available for re-allocation, once the deceased paid the premium in 1987 and was put into possession. The allocating authority was statutorily required to perfect the letter of offer on time. If there was a resurvey and re-planning, while the first allottee was in occupation and had made full payments, still, he ought to have been given the priority. To ignore the person who had paid first and taken possession was unjust and illegal. Equally, to proceed to issue another letter of allotment and for the 1st defendant to proceed to make payments without ascertaining through due diligence the situation on the ground and on prior dealings on the land, the 1st defendant cannot hide under a bona fide allottee. See Diasproperty Limited & another -vs- Githae & 8 others [2025] KESC 19 (KLR)
58. The upshot is that I grant the following orders:
- a. Declaration that the issuance of a new allotment letter, lease and subsequent registration of Kitale/Municipality Block 11/171 in favour of the 1st defendant was unprocedural, illegal, null and void.
 - b. Declaration that the adjustments and or switching or repositioning of the map and plan of the subject parcel from its original and the issuance of a new allotment letter without notice to the plaintiff was unprocedural and illegal.
 - (c) Mandatory injunction to compel the 2nd, 3rd and 4th defendants to amend the register to parcel No. Kitale/Municipality Block 11/171, so as to delete the names of the 1st and 2nd defendants and to regularize the plaintiffs as the legal owners, in trust for the beneficiaries of the estate of the late Samuel K.M. Kigen.
 - (d) Permanent injunction to restrain the 1st defendant, his agents, servants or employees from trespassing, building, fencing, entering into, leasing out, selling or in any way whatsoever interfering with the plaintiffs' quiet and peaceful occupation, use and enjoyment of parcel No. Kitale/Municipality Block 11/171.
59. The plaintiffs have not led evidence on damages. The defence and counterclaim by the 1st defendant are both incompetent for lack of a titular heading and also lack merits. They are dismissed with costs.
60. Costs of the suit to the plaintiffs.

JUDGMENT DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 23RD DAY OF JULY 2025.

In the presence of:

Court Assistant - Dennis

Kittony for the plaintiffs present

Arunga for the 1st defendant present

Odeyo for the 2nd and 3rd defendants absent



4th defendant absent

HON. C.K. NZILI

JUDGE, ELC KITALE.

