



Awke v Embakasi Ranching Co Ltd & another (Environment & Land Case E173 of 2022) [2024] KEELC 1155 (KLR) (26 February 2024) (Judgment)

Neutral citation: [2024] KEELC 1155 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E173 OF 2022
JO MBOYA, J
FEBRUARY 26, 2024**

BETWEEN

ABDULHAMID. S AWKE PLAINTIFF

AND

EMBAKASI RANCHING CO LTD 1ST DEFENDANT

JOHN MUCHAI KANAI 2ND DEFENDANT

JUDGMENT

Introduction and Background

1. The Plaintiff herein approached the Honourable Court vide Plaintiff dated the 16th May 2022; and in respect of which same sought for various reliefs. However, the Plaintiff under reference was thereafter amended in terms of the Amended Plaintiff dated the 1st July 2022; and in respect of which the Plaintiff has sought for the following reliefs, [verbatim]:
 - i. A permanent injunction restraining the 2nd and 3rd Defendants and/or their servants, officers, officials, employees and/or agents from interfering, trespassing upon, cultivating, constructing, reallocating, disposing of or in any other manner interfering with the Plaintiff quiet enjoyment, possession and ownership of the suit property being Plot No. 105/14265 [formerly C.163].
 - ii. Declaration that the Plaintiff is the absolute, rightful and Bona fide owner of the suit property known as Plot No. 105/14265 [formerly C.163]
 - iii. That an order be issued directing the 2nd Defendant to forthwith and unconditionally process and release to the Plaintiff the Title Deed for the suit property known as Plot No. 105/14265 [formerly C.163].



- iv. An order be issued directing the 2nd and 3rd Defendants to deliver to the Plaintiff at the 2nd and 3rd Defendants expense vacant possession of the suit property known as Plot No. 105/14265 [formerly C.163].
 - v. Costs of the suit with Interest from the date of filing suit until payment in full.
 - vi. Any other relief that the court may deem fit and expedient to grant
2. Upon being served with the Amended Plaintiff, the 1st Defendant duly entered appearance and filed a Statement of Defense dated the 3rd October 2022; and in respect of which same denied the claims alluded to at the foot of the amended Plaintiff. For coherence, the 1st Defendant contended that the suit property lawfully belongs to and was duly allocated in favor of the 2nd Defendant.
 3. On the other hand, the 2nd Defendant duly entered appearance and thereafter filed an amended Statement of Defense dated the 30th September 2022; and in respect of which same impleaded the following reliefs;
 - i. Judgment against the Plaintiff.
 - ii. A declaration by the honorable court that L.R No. 105/14265 [formerly Plot No. V.14944] - Embakasi Ranching Co. Ltd belongs to the 2nd Defendant.
 - iii. Costs of the suit.
 - iv. Any other relief the Honorable court may seem fit and just to grant under the circumstances.
 4. Moreover, the instant matter came up for directions on the 4th October 2023; whereupon the advocates for the respective Parties covenanted that same had filed and exchanged all the requisite pleadings, bundle of documents and witness statements. Consequently and in this regard, the court proceeded to and certified the matter as ready for hearing.

Evidence By The Parties’:

Plaintiff’s Case:

5. The Plaintiff’s case gravitates and revolve around the Evidence of one witness, namely, Abdulhamid. S. Awke. Same testified as PW1.
6. It was the testimony of the witness that same became a member of the 1st Defendant herein on or about the year 1978, when same [witness] bought and acquired a share in the said company. Furthermore, the witness averred that upon buying and acquiring a share in the 1st Defendant company, the 1st Defendant herein generated and issued a share certificate number 6029, which denoted that the witness was entitled to a portion land within the larger parcel of land belonging to and registered in the name of the 1st Defendant.
7. It was the further testimony of the witness that upon acquiring a share in the 1st Defendant company, same made the requisite payments and upon completion of the payments, same [witness] was issued with a provisional Letter of allotment, wherein same [witness] was allotted Plot number C.163.
8. On the other hand, the witness testified that on or about the year 1982, same [witness] was called upon to pay the survey fees so as to enable the plot which had been allocated unto him [witness] to be surveyed. In this regard, the witness averred that same duly paid the requisite survey fees culminating into the plot in question being surveyed.



9. It was the further testimony of the witness that upon the survey of the Plot, the 1st Defendant's surveyor proceeded to and prepared a beacon certificate delineating the extent of the suit plot.
10. Other than the foregoing, the witness averred that on or about the year 1983, the 1st Defendant herein called upon various members/shareholders, including the Plaintiff to pay Civil Engineering fees, whose purpose was to facilitate the processing and ultimate issuance of the Certificate of title. For good measure, the witness averred that same duly complied and paid the civil engineering fees.
11. Furthermore, the witness averred that having met all the requisite conditions, same entered upon and took possession of the plot which had been allocated unto him. In any event, the witness averred that same proceeded to and fenced the suit plot.
12. Nevertheless, the witness averred that despite having fully paid for the plot and thereby acquiring the lawful and legitimate rights thereto, the 1st Defendant herein has failed and neglected to process and issue the requisite certificate of title in his favor.
13. Conversely, the witness herein has averred that the 1st Defendant herein has instead purported to allocate the suit plot to and in favor of the 2nd Defendant herein and that same [1st Defendant] is now in the process of transferring the suit plot, which has since been renumbered as Plot No. 105/14265; to and in favor of the 2nd Defendant.
14. Be that as it may, the witness testified that upon being issued with a provisional letter of allotment, coupled with the payment of all the requisite fees, which was demanded by the 1st Defendant, the 1st Defendant ceased to hold any lawful rights over and in respect to the suit property and the 1st Defendant could not purport to re-allocate the suit plot to any other part, the 2nd Defendant not excepted.
15. Additionally, the witness testified that the 2nd Defendant herein in collusion with some Directors of the 1st Defendant has now forcefully entered upon and taken possession of the suit property and same has since commenced construction of a house thereof, even though the suit property does not lawfully belong unto him.
16. On the other hand, the witness averred that the 1st Defendant is also processing the issuance of a Certificate of title to and in favor of the 2nd Defendant and that in the event the 2nd Defendant is issued with a Certificate of title to and in respect of the suit property, same [witness] shall be dispossessed and/or deprived of the suit property.
17. As a result of the foregoing, the witness herein has implored the court to find and hold that the suit plot had lawfully been allocated unto him and as a result of the allocation thereof, the suit plot lawfully belongs to the witness and not otherwise.
18. Other than the foregoing, the witness alluded to the witness statement dated the 1st July 2022; and whose contents have been reproduced herein before and thereafter sought to adopt and rely on the said witness statement.
19. Suffice it to point out that the contents of the witness statement dated the 1st July 2022; was thereafter adopted and admitted as the Evidence- in- chief on behalf of the witness [PW1].
20. On the other hand, the witness also referred to the List and Bundle of documents dated the 1st July 2022; containing seven [7] documents and thereafter same sought to adopt and rely on the contents of the various documents.
21. To the extent that there was no objection to the production of the named documents, same were thereafter tendered in evidence and produced as Exhibits P1 to P7, respectively.



22. Furthermore, the witness also alluded to the Further List and Bundle of documents dated the 30th March 2023; and sought to produce same as further Exhibits. For good measure, the documents at the foot of the List dated the 30th March 2023; were thereafter produced and admitted in evidence as Exhibits P8 to P10, respectively.
23. Additionally, the witness adverted to the amended Plaintiff dated the 1st July 2022; and sought to adopt and rely on same. Instructively, the contents of the amended Plaintiff and the reliefs enumerated thereunder were thereafter adopted by the Honourable court.
24. On cross examination by Learned counsel for the 1st Defendant, the witness stated that same has since availed and tendered before the Honourable court various documents pertaining to the allocation of Plot number C.163. Further and in any event, the witness averred that the plot in question was duly allocated by the 1st Defendant.
25. Whilst under further cross examination, the witness averred that the plot in question was allocated unto him [witness] by one Mr. Muchiri, who was previously the chair person of the 1st Defendant.
26. It was the further testimony of the witness that after same [witness] was allocated the suit plot, the plot in question was duly surveyed by the 1st Defendant's surveyor.
27. Furthermore, the witness averred that upon becoming a member of the 1st Defendant, he [witness] was issued with a share certificate which he [witness] has confirmed to be one of the documents, which has been tendered and produced before the court.
28. Be that as it may, the witness admitted and acknowledged that the share certificate which same has produced bears some alteration on the face thereof. Besides, the witness admitted that the share certificate tendered before the court also contains two [2] numbers thereon.
29. On the other hand, the witness stated that same has tendered and/or produced before the Honourable court a receipt which was issued by and on behalf of the 1st Defendant. Instructively, the witness averred that the receipt which was issued unto him bears receipt number 265.
30. Whilst still under cross examination, the witness averred that same also paid a total of Kes.25, 000/- only towards and on account of survey. In this respect, the witness added that the payment on account of survey fees was acknowledged and receipted in the year 2018.
31. Other than the foregoing, the witness also averred that same has also tendered and produced before the court a copy of the Map procured and obtained from the offices of the 1st Defendant. However, the witness admitted that the Map which was produced did not bear the certification by and on behalf of the 1st Defendant.
32. On cross examination by Learned counsel for the 2nd Defendant, the witness averred that same has not personally visited the offices of the 1st Defendant. However, the witness added that same [witness] has been sending a clerk to undertake his various errands on his behalf.
33. Other than the foregoing, the witness averred that the plot, namely, number C.163, which was allocated unto him was duly surveyed.
34. Furthermore, the witness averred that the 2nd Defendant herein has encroached onto and or trespassed upon his plot and it is because of the trespass that same lodged and/or commenced the instant suit.
35. With the foregoing testimony, the Plaintiff's case was closed.



1st Defendant's Case:

36. Similarly, the 1st Defendant's case is premised and or predicated on the Evidence of one witness, namely, Jack Maina Wachira. Same testified as DW1.
37. It was the testimony of the witness that same is a surveyor by profession and currently employed by the 1st Defendant.
38. Furthermore, it was the testimony of the witness that same undertakes, inter-alia, survey and subdivision of various portions of land belonging to and registered in the name of the 1st Defendant. In this regard, the witness added that same is therefore conversant with the facts pertaining to and concerning the subject matter.
39. Other than the foregoing, the witness adverted to the witness statement dated the 16th June 2023; and which statement the witness sought to adopt and rely on as his Evidence in chief. For coherence, the witness statement dated the 15th June 2023; was thereafter adopted and admitted as the Evidence in chief on behalf of the witness.
40. Additionally, the witness alluded to the List and Bundle of documents dated the 3rd October 2022; and thereafter sought to adopt and rely on same. Instructively, the documents at the foot of the List and Bundle dated the 3rd October 2022; were thereafter admitted and produced as Exhibit[s] D1 to D5, respectively, on behalf of the 1st Defendant.
41. Furthermore, the witness also alluded to the Further List and Bundle of documents dated the 16th March 2023; and sought to produce and rely on same. For good measure, the documents at the foot of the Further List was thereafter produced and admitted as Exhibit D6.
42. On the other hand, the witness referred to the Statement of Defense dated the 3rd October 2022; and which was filed on behalf of the 1st Defendant.
43. On cross examination by Learned counsel for the 2nd Defendant, the witness averred that same was employed by the 1st Defendant as a surveyor in the year 2003. Nevertheless, the witness added that there were other surveyors.
44. Whilst under further cross examination, the witness averred that the plot number C.163; which is being alluded to by the Plaintiff herein is indeed known to him [witness].
45. On the other hand, the witness averred that the plot in question is to be found in the area referred to as Area C.
46. Be that as it may, the witness averred that same does not know in whose name plot No. C.163; is currently registered to.
47. Furthermore, it was the testimony of the witness that same is conversant with Plot No. V.14944, which the witness avers was allocated to and in favor of the 2nd Defendant.
48. Further and in any event, the witness averred that plot Number V.14944, has since been surveyed and renumbered as L.R No. Nairobi Block 105/14265, which belongs to and is registered in the name of the 2nd Defendant.
49. Besides, it was the testimony of the witness that it is him [witness] who pointed out Plot No. V.14944 to the 2nd Defendant.



50. On cross examination by Learned counsel for the Plaintiff, the witness averred that same undertakes various assignment[s] for and on behalf of the 1st Defendant. In this regard, the witness added that same undertakes, inter-alia, survey and subdivision of the 1st Defendant's plot.
51. Whilst under further cross examination, the witness averred that the documents tendered and produced by the Plaintiff are fraudulent. In any event, the witness contended that the said documents are fraudulent because same have not been signed by and on or behalf of the 1st Defendant.
52. Be that as it may, the witness acknowledged that the Letter of allotment by the Plaintiff was duly signed by the former chair person of the 1st Defendant. Furthermore, the witness averred that thereafter the Plaintiff was issued with a share certificate number 6029.
53. Other than the foregoing, the witness herein averred that the share certificate that was issued in favor of the Plaintiff reflected an alluded to the Letter of allotment.
54. Besides, the witness also averred that the share certificate which was issued also contained the stamp of the 1st Defendant.
55. Whilst under cross examination, the witness averred that the receipt which has since tendered before the Honourable court bear[s] the logo of the 1st Defendant.
56. Additionally, the witness testified that the 1st Defendant was the one that was chargeable with the subdivision of the various and thus the 1st Defendant is the one who was chargeable with the subdivision of the plots to be allocated to various members and hence the 1st Defendant is the one privy to the ground position pertaining to and in respect of the suit property.
57. Nevertheless, the witness acknowledged that same has not produced before the court a copy of the allocation Map or at all
58. On the other hand, it was the testimony of the witness that same is privy to and knowledgeable of Plot No. V.14944, which the witness averred was allocated to and in favor of the 2nd Defendant. Further and in any event, the witness added that it is him [witness] who pointed out in respect of Plot No. V.14944 to the 2nd Defendant.
59. Whilst under further cross examination, the witness averred that same pointed out ground location of the Plot, No. V. 14944 on the 5th August 2020.
60. With the foregoing testimony, the Defendant's case was fully closed.

2nd Defendants's Case:

61. The 2nd Defendant's case revolves around the Evidence of one John Muchiri Kanai, who testified as DW2.
62. It was the testimony of the witness that same is the 2nd Defendant and by virtue of being the 2nd Defendant, same is therefore conversant with and knowledgeable of the facts of this matter [suit].
63. Other than the foregoing, the witness also adverted to a witness statement dated the 21st November 2022; and which statement the witness sought to adopt and rely on a Evidence of the witness in chief.
64. For coherence, the witness statement under reference was thereafter adopted and admitted as the Evidence- in -chief of the witness.



65. Other than the foregoing, the witness herein alluded to the List and Bundle of documents dated the 1st November 2022; and which contain 6 documents. In this regard, the witness sought to adopt and rely on the various documents alluded to and contained at the foot of the said List and Bundle of documents.
66. Suffice it to point out that in the absence of any objection to the production of the various documents, same were duly produced and admitted as Exhibit[s] D1 to D6, respectively, on behalf of the 2nd Defendant.
67. Additionally, the witness adverted to the Statement of Defense dated the 30th September 2022; and thereafter implored the Honourable court to dismiss the Plaintiff's suit.
68. On cross examination by Learned counsel for the 1st Defendant, the witness averred that same has produced and tendered before the Honourable court assorted documents to confirm that same is the lawful proprietor of Plot No. V.14944.
69. Furthermore, the witness averred that after payment of the requisite charges, same was issued with a share certificate pertaining to ownership of the named Plot on the 17th December 2012. In addition, the witness averred that the Plot which same was allocated is indicated to be situate on Map Number 6.
70. Other than the foregoing, the witness averred that same was allocated the Plot on the 20th June 2013; and that the back of Certificate of ownership was duly signed by two persons, inter-alia, a Director and a surveyor.
71. Whilst under further cross examination, the witness also pointed out that the Plot under reference which was allocated unto same was duly pointed out to him and thereafter the plot in question was surveyed. In any event, the witness averred that same was also issued with a beacon certificate.
72. On the other hand, it was the testimony of the witness that after the Plot No. V.14944 was allocated unto him, same entered upon and took possession thereof. In particular, the witness averred that same hired workers to fence the property.
73. Nevertheless, it was the testimony of the witness that despite having been allocated Plot No. V.14944, same [witness] has not been issued with the certificate of title to date.
74. Other than the foregoing, it was the testimony of the witness that the process pertaining to the issuance of certificate of title is ongoing. In any event, the witness averred that the property in question, namely, Plot No. V.14944, has since been entered in the register and same was issued with a parcel number.
75. It was the further testimony of the witness that same was called/summoned by the Board of Directors of the 1st Defendant and that upon being summoned, same [witness] attended the scheduled meeting whilst the Plaintiff herein failed to attend the meeting.
76. Additionally the witness averred that after the meeting, which was called by the 1st Defendant, the 1st Defendant authenticated that his [2nd Defendant's] documents were legitimate.
77. On cross examination by Learned counsel for the Plaintiff, the witness averred that same was issued with a Certificate of ownership, which was duly signed on the reverse by two [2] officers of the 1st Defendant.
78. Furthermore, the witness also averred that the 1st Defendant summoned both the witness and the Plaintiff as pertains to the dispute concerning ownership of the disputed Plot. However, the witness averred that the Plaintiff failed to attend the meeting.



79. On the other hand, it was the testimony of the witness that same [witness] attended the meeting and thereafter the 1st Defendant confirmed that his [witness] documents to and in respect of the disputed plots were lawful and valid.
80. Whilst under further cross examination, the witness averred that same was allocated Plot No. V.14944 in the year 2013. At any rate, the witness admitted that between the years 2012 to 2013, same [witness] did not own any plot within the 1st Defendant's property.
81. Other than the foregoing, the witness averred that upon being allocated Plot No. V.14944, same [witness] proceeded to engage one Mr. Stephen Gathecha to fence the property. Furthermore, the witness stated that the said Stephen Gathecha proceeded to and indeed fenced the property on his behalf.
82. Whilst under further cross examination, the witness stated that same was never issued with a Letter of allotment. Besides, the witness also averred that his name was entered on the register in the year 2020.
83. With the foregoing testimony, the 2nd Defendant's case was duly closed.

Parties' Submissions:

Plaintiff's Submissions:

84. The Plaintiff herein filed two [2] sets of submissions dated the 26th October 2023; and 7th February 2024, respectively; and wherein the Plaintiff has highlighted three [3] salient issues for due consideration by the Honourable court.
85. Firstly, Learned counsel for the Plaintiff has submitted that the Plaintiff herein was duly and lawfully allocated Plot No. C.163 by the 1st Defendant and that thereafter the 1st Defendant proceeded to and processed a provisional Letter of allotment which confirmed that the Plaintiff had duly allocated the suit plot.
86. Furthermore, Learned counsel for the Plaintiff has submitted that upon being allocated Plot No. C.163, the Plaintiff proceeded to and paid the requisite charges; which payments were duly acknowledged and receipted by the 1st Defendant.
87. On the other hand, Learned counsel for the Plaintiff has also submitted that despite being duly and lawfully allocated Plot No. C.163 by the 1st Defendant, the 1st Defendant subsequently purported to allocate the same property to the same Defendant albeit under the guise of Plot No. V.14944.
88. Notwithstanding the foregoing, Learned counsel for the Plaintiff has submitted that the purported allocation of the suit plot to and in favor of the 2nd Defendant was irregular, illegal and unlawful.
89. Furthermore, Learned counsel for the Plaintiff has submitted that by the time the 1st Defendant was purporting to allocate the suit plot to and in favor of the 2nd Defendant, the Plot in question was not available for allocation or at all.
90. In any event, Learned counsel for the Plaintiff has contended that despite the issuance of the share certificate and ownership certificate to and in favor of the 2nd Defendant, the 2nd Defendant herein was never issued with a Letter of allotment and hence the 2nd Defendant did not acquire and/or accrue any lawful right to and in respect of Plot No. V.14944, which is a disguised number.
91. In support of the submissions that the suit plot, namely, Plot No. C.163 was no longer available to be allocated to and in favor of the 2nd Defendant, Learned counsel for the Plaintiff has cited and relied



on inter-alia the case of Benson Mutiso Makau vs Lydia Wambui Kimemia & Another (ELC No. 534 of 2013) (UR) and Eunice Wairimu Kuria vs Noman Mutuota & 2 Others (ELC No. 327 of 2015) (UR), respectively.

92. Secondly, Learned counsel for the Plaintiff has submitted that as between the Plaintiff and the 2nd Defendant, the Plaintiff herein has tendered and placed before the Honorable court credible evidence to vindicate that the suit plot was duly and lawfully allocated to and in favor of the Plaintiff.
93. Furthermore, Learned counsel for the Plaintiff has contended that even though the 1st Defendant contended that the Plaintiff's documents pertaining to and concerning the allotment of Plot No. C.163, were fraudulent; however, the 1st Defendant neither tendered nor produced any credible evidence to support the allegations of fraud and/or forgery.
94. Be that as it may, Learned counsel for the Plaintiff has submitted that the Plaintiff herein was lawfully and validly allocated Plot No. C.163, which is the disputed portion of land, long before the purported allocation of same to and in favor of the 2nd Defendant.
95. Further and in any event, Learned counsel for the Plaintiff has submitted that by the time the suit property was purported to be allocated to and in favor of the 2nd Defendant, same was not available for such allocation or at all.
96. In a nutshell, Learned counsel for the Plaintiff has submitted that the Plaintiff herein is lawfully entitled to ownership of Plot No. C.163 [now known as L.R No. Nairobi Block 105/14265].
97. In support of the submissions that the Plaintiff has established and demonstrated his case as pertains to ownership of the suit property, same has cited and relied on the holding in the case of Shadrak Ongaro Osoro vs John Mwangi & Another (2023)eKLR.
98. Thirdly, Learned counsel for the Plaintiff has submitted that the 2nd Defendant herein sought to mislead the court and in this regard filed and relied on a misleading witness statement and which thereafter the 2nd Defendant sought to recant, during the hearing.
99. Nevertheless, Learned counsel for the Plaintiff has submitted that a witness statement becomes evidence under oath, once same is duly adopted and admitted as evidence in chief. Consequently and in this regard, Learned counsel for the Plaintiff has contended that a witness statement once admitted cannot be recanted or at all.
100. Be that as it may, Learned counsel for the Plaintiff has submitted that by acknowledging that the witness statement which same had filed contained erroneous facts, the 2nd Defendant admitted that his testimony before the court was wrought with falsehood[s] and thus same is devoid of probative value.
101. Arising from the foregoing, Learned counsel for the Plaintiff has thereafter invited the Honourable court to find and hold that the Plaintiff has placed before the court cogent, plausible and credible evidence to demonstrate that same (Plaintiff) is the lawful and legitimate proprietor of the suit plot, namely, C.163 [now known as Nairobi Block 105/14265].

1ST DEFENDANT'S SUBMISSIONS:

102. The 1st Defendant filed written submissions dated the 8th November 2023; and in respect of which same has raised, highlighted and amplified two [2] issues for consideration by the Honourable court.
103. First and foremost, Learned counsel for the 1st Defendant has submitted that the burden of proof as pertains to proving the claim in respect of ownership of the suit plot, laid on the Plaintiff, who was obliged to place before the Honourable court sufficient and credible evidence.



104. However, Learned counsel for the 1st Defendant has submitted that the Plaintiff herein has failed to tender and/or place before the Honorable court any scintilla of evidence to prove his claim to and in respect of the suit property.
105. Furthermore, Learned counsel for the 1st Defendant has contended that the Plaintiff herein was summoned by the Board Directors of the 1st Defendant with a view to availing and/or producing his [Plaintiff's documents] for purposes of verification. However, Learned counsel has pointed out that despite being availed an opportunity to appear before the 1st Defendant's Board of Director[s], the Plaintiff failed, neglected and/or refused to attend the scheduled meeting.
106. Arising from the failure to appear before the 1st Defendant's Board of director[s] Learned counsel for the 1st Defendant has therefore contended that the Plaintiff's documents were neither verified nor authenticated.
107. Consequently and in view of the foregoing, Learned counsel for the 1st Defendant has thus submitted that the Plaintiff has failed to prove his claim as pertains to ownership of the disputed plot and hence his [Plaintiff's case] ought to be dismissed.
108. In support of the submissions that the Plaintiff has failed to discharge the burden of proof over and in respect of the claim beforehand, Learned counsel for the Plaintiff has cited and relied on inter-alia the case of Maria Ciabaitaru & Others vs Blue Shield Insurance Co Ltd (2005) 1EA at page 280 and Mumbi M'nabea vs David M Wachira 92016)eKLR, respectively.
109. Secondly, Learned counsel or the 1st Defendant has submitted that the issue of double allocation does not arise or at all in respect of the matter beforehand. In any event, Learned counsel for the 1st Defendant has contended that the question of double allocation can only arise where the allocation complained of relate to the same property and both allocation were lawful and procedural.
110. Nevertheless, as concerns the subject matter, Learned counsel for the 1st Defendant has submitted that the documents being relied upon by the Plaintiff herein are devoid of authenticity and in any event, Learned counsel added that the 1st Defendant has never allocated Plot No. C.163 to and in favor of the Plaintiff.
111. On the other hand, Learned counsel has submitted that owing to the fact that the 1st Defendant has never allocated the suit property to the Plaintiff, the Plaintiff herein cannot now be heard to contend that same is the lawful and legitimate owner of L.R No. Nairobi/Block 105/14265.
112. Furthermore, Learned counsel for the 1st Defendant has submitted that the dispute beforehand does not touch on double allocation of land, but pertains to the physical location of the various parcels of land claimed by both the Plaintiff and the 2nd Defendant. Nevertheless, counsel has pointed out that the Plaintiff herein has never been allocated any property by the 1st Defendant.
113. Thirdly, Learned counsel for the 1st Defendant has submitted that to the extent that the Plaintiff has failed to place before the Honorable court any cogent and plausible evidence, the Plaintiff's suit merits dismissal.
114. Consequently and in the premises, Learned counsel for the 1st Defendant has thereafter invited the Honourable court to find and hold that the Plaintiff's suit ought to be dismissed with costs to the 1st Defendant.



2nd Defendant's Submissions:

115. The 2nd Defendant filed written submissions dated the 15th November 2023; and wherein same has highlighted two [2] salient and pertinent issues for consideration by the Honourable court.
116. First and foremost, Learned counsel for the 2nd Defendant has submitted that the Plot which is being claimed by the Plaintiff herein is situate and located in a different area as opposed to the plot belonging to and allocated in favor of the 2nd Defendant. For coherence, Learned counsel for the 2nd Defendant has invited the court to take cognizance of the evidence tendered by Jack Wachira Kamau, [DW1].
117. Secondly, Learned counsel for the 2nd Defendant has submitted that the question of double allocation, which has been amplified by the Plaintiff, does not arise or at all. In this respect, Learned counsel for the 2nd Defendant has contended that the 1st Defendant, who is the allocating authority has denied and disputed having ever allocated any plot to and in favor of the Plaintiff herein.
118. Arising from the foregoing, Learned counsel for the 2nd Defendant has contended that insofar as the Plaintiff was never allocated any plot or at all, same [Plaintiff] cannot no be heard to lay a claim to the disputed plot, which now constitutes L.R No. Nairobi/Block 105/14265 or at all.
119. Premised on the foregoing, Learned counsel for the 2nd Defendant has therefore invited the Honourable court to find and hold that the suit property, which is being claimed lawfully belongs to the 2nd Defendant. In any event, Learned counsel has also contended that the evidence of DW1, clearly pointed out that it is him [DW1] who showed and/or pointed out the suit property to the 2nd Defendant.
120. In a nutshell, Learned counsel for the 2nd Defendant has contended that it is the 2nd Defendant who is the lawful and bona fide proprietor of the suit property and thus the Plaintiff's suit is devoid of merits.

ISSUES FOR DETERMINATION:

121. Having reviewed the pleadings filed by and on behalf of the Parties; and upon taking into account the evidence tendered [both oral and documentary] and upon consideration of the written submissions filed by and on behalf of the respective Parties, the following issues do emerge and are thus worthy of determination;
 - i. Whether the documents tendered by and on behalf of the Plaintiff were fraudulent either as contended by the 1st Defendant or otherwise.
 - ii. Whether the Plaintiff was duly and lawfully allocated Plot No. C.163 and if so, whether the said plot remained available for subsequent allocation or at all.
 - iii. Whether the 2nd Defendant acquired lawful rights and/or interest over and in respect of Plot No. V.14944 [now known as L.R Nairobi/Block 105/14265].
 - iv. What reliefs, if any; ought to be granted.



Analysis And Determination

Issue Number 1 Whether the Documents tendered by and on behalf of the Plaintiff were fraudulent either as contended by the 1st Defendant or otherwise.

122. The Plaintiff herein tendered and produced before the Honourable court assorted documents, inter-alia, share certificate; copy of receipt number 265 and a copy of the Letter of allotment, which were issued by the 1st Defendant herein.
123. Furthermore, the Plaintiff herein also tendered and produced before the court a copy of the map issued by the 1st Defendant relating to and concerning the ground location for Plot No. C.163, which had been duly allocated to and in favor of the Plaintiff.
124. Nevertheless, during the course of cross examination by Learned counsel for the 1st Defendant, same contended that the documents which were produced by and on behalf of the plaintiff were fraudulent and thus incapable of conferring upon the Plaintiff any lawful and legitimate rights to and in respect of the suit plot.
125. Be that as it may, when DW1 testified before the court and in the course of his cross examination, same acknowledged and admitted the documents that had been tendered by and on behalf of the Plaintiff.
126. To this end, it is imperative to reproduce the salient features of the evidence by DW1 whilst being cross examined by Learned counsel for the 2nd Defendant. For coherence, same testified as hereunder;
- “The Plot being referred to as C.163 is known to me. The plot in question is to be found in the area referred to as Area C. I don’t know in whose name Plot No. C.163 is currently registered”.
127. Whilst being cross examined by Learned counsel for the Plaintiff, DW1 stated as hereunder;
- “I have said that the Plaintiff’s documents are fraudulent, I said so because the documents have not been signed by and on behalf of the 1st Defendant”.
128. Furthermore, DW1 proceeded and stated as hereunder;
- “The letter of allotment by the Plaintiff was signed by the former chairperson of the 1st Defendant. The Plaintiff was issued with a share certificate. The share certificate number is 6029. The share certificate is also shown in the letter of allotment”.
129. From the testimony of DW1, [whose details have been reproduced herein before], it is evident that DW1 is acknowledging and indeed confirming that the Plaintiff was issued with a Letter of allotment, which was duly signed by the former chairperson of the 1st Defendant.
130. Similarly, DW1 herein is on record as admitting and conceding that the Plaintiff was issued with a share certificate and that the share certificate references the Letter of allotment, which was issued to the Plaintiff.
131. In my humble view, the evidence that was tendered and placed before the Honourable court by DW1, does not support the contention by and on behalf of the 1st Defendant that documents tendered and/or availed by the Plaintiff were fraudulent.



132. To the contrary, the totality of the evidence tendered by and on behalf of the 1st Defendant seem to corroborate and fortify the testimony by the Plaintiff that same [Plaintiff] was lawfully allocated Plot No. C.163.
133. Suffice it to point out that it is the 1st Defendant who contended that the documents by and on behalf of the Plaintiff were fraudulent and thus the burden of proving the plea of fraud, fell on the shoulders of the 1st Defendant and not otherwise.
134. Furthermore, there is no gainsaying that where one, the 1st Defendant not excepted, adverts to the plea of fraud, then same is obligated to prove the plea of fraud to the requisite standard, which ordinarily is beyond the balance of probabilities.
135. Sadly though, the 1st Defendant who adverted to the plea of fraud has failed to tender and/or place before the Honorable court any shred [scintilla] of evidence to vindicate the contention that the Plaintiff's documents were fraudulent.
136. To my mind, the necessity to prove the plea of fraud beyond the balance of probabilities has been underscored and established in a legion of case law.
137. In this respect, it suffices to sample just but a few. Firstly, it is appropriate to cite and reiterate the holding of the Court in the case of Koinange & 13 others versus Charles Karuga Koinange [1986] eKLR, where the court stated and observed thus;

“The party alleging fraud had the burden of proving it and they had to discharge that burden. Allegations of fraud must be strictly proved.”

138. Additionally, the standard of proof in matters where the plea of fraud has been adverted to, was also discussed, highlighted and elaborated upon by the Court of Appeal in the case of Kuria Kiarie & 2 others v Sammy Magera [2018] eKLR, where the court held thus;
25. The next and only other issue is fraud. The law is clear and we take it from the case of Vijay Morjaria vs Nansingh Madhusingh Darbar & Another [2000] eKLR, where Tunoi, JA. (as he then was) stated as follows:

“It is well established that fraud must be specifically pleaded and that particulars of the fraud alleged must be stated on the face of the pleading. The acts alleged to be fraudulent must, of course, be set out, and then it should be stated that these acts were done fraudulently. It is also settled law that fraudulent conduct must be distinctly alleged and distinctly proved, and it is not allowable to leave fraud to be inferred from the facts.” [Emphasis added].

The same procedure goes for allegations of misrepresentation and illegality. See Order 2 Rule 4 of the Civil Procedure Rules.

26. As regards the standard of proof, this Court in the case of Kinyanjui Kamau vs George Kamau [2015] eKLR expressed itself as follows;-

“...It is trite law that any allegations of fraud must be pleaded and strictly proved. See Ndolo vs Ndolo (2008) 1 KLR (G & F) 742 wherein the Court stated that: “...We start by saying that it was the respondent who was alleging that the will was a forgery and the burden to prove that allegation lay squarely on him. Since the respondent was making a serious charge of forgery or fraud, the standard of proof required of him was obviously higher than that required in ordinary civil cases, namely proof



upon a balance of probabilities; but the burden of proof on the respondent was certainly not one beyond a reasonable doubt as in criminal cases... "...In cases where fraud is alleged, it is not enough to simply infer fraud from the facts."

27. We have examined the appellants' amended defence for any pleading on particulars of fraud or illegality but there is none. The claims were therefore stillborn and no evidence could be tendered. Even if it was open to tender evidence on fraud and illegality, the mere allegation that a sale agreement and a Consent for transfer cannot be obtained on the same day is well below the standard of proof set under the authorities cited. We need not belabour this issue as we are satisfied that it was neither properly pleaded nor strictly proved. That ground of appeal fails too.
139. Quiet clearly, it was the 1st Defendant who had contended that the documents tendered and produced by and on behalf of the Plaintiff were fraudulent and to the extent that same made the foregoing assertion, the evidential burden of proof laid on her and not otherwise.
140. Before departing from the subject issue, it is imperative to take cognizance of paragraphs 12 and 13th of the written submissions filed by and on behalf of the 1st Defendant.
141. For ease of reference, the said paragraphs are reproduced as hereunder;
- (12) the 1st Defendant equally affirm that Plot No. C.163, which the Plaintiff claims ownership, does exist in an Area known as the C Area and the same is in map C but could not confirm whether the same is owned by the Plaintiff herein since his documents are yet to be authenticated and he has to pay the requisite charges for his allocation and clearance.
- (13) that the Plaintiff herein produced exhibit number 4 and 7, both are maps which purportedly show the location of the suit land from the face of the said maps, it is evidently clear that they are of totally different areas and do not correspond at all; clearly proving that the property the Plaintiff alleges he was allocated is totally different and distinct from the one he claims on the ground.
142. My understanding of the latter position taken by and on behalf of the 1st Defendant and which has been reproduced in the preceding paragraphs, drives me to the conclusion that the 1st Defendant is by sidewind repenting from the earlier position, whereby same [1st Defendant], contended that the Plaintiff's documents were fraudulent.
143. Surely, one [1st Defendant] cannot be heard to contend that the Plaintiff's documents are fraudulent on one hand, whilst on the other hand same is seeking to have the documents authenticated and also to have the Plaintiff to pay the requisite charges for his allocation and clearance.
144. In my humble view, the 1st Defendant herein cannot be allowed oscillate between one extreme position to the other, albeit at the same time. For coherence, the kind of attitude displayed by the 1st Defendant is tantamount to approbating and reprobating; blowing hot and cold; and fast and lose, at the same time.
145. Simply put, such kind of attitude and/or conduct constitute[s] an abuse of the Due process of the court and is otherwise calculated to camouflaged the effective and effectual determination of the issues placed before the court.
146. To buttress the position that a Party, the 1st Defendant not excepted, cannot approbate and reprobate at the same time, it suffices to take cognizance of the holding in the case of Republic versus Institute



of Certified Public Secretaries of Kenya Ex-parte Mundia Njeru Geteru (2010)eKLR, where the court stated and held thus;

“It is obvious that Mundia is approbating and reprobating which is an unacceptable conduct. Such conduct was considered in *Evans vs Bartlam* (1973) 2 ALL ER 649 at page 652, where Lord Russel of Killowen said; The doctrine of approbation and reprobation requires for its foundation inconsistency of conduct, as where a man having accepted a benefit given him by a judgment cannot allege the invalidity of the judgment which conferred the benefit. Again in *Banque De Moscou vs Kendersley* (1950) ALL ER 549, Sir Evershed said of such conduct. This is an attitude of which I cannot approve, nor do I think in law the defendants are entitled to adopt it. They are, as the Scottish lawyers (frame it) approbating and reprobating or, in the more homely English phrase blowing hot and cold.”

147. In a nutshell, my answer to issue number one [1] is to the effect that the plea of fraud, which was highlighted and canvassed by the 1st Defendant with a view to impugning the Plaintiff’s documents, has neither been established nor proven.

Issue Number 2 Whether the Plaintiff was duly and lawfully allocated Plot No. C.163 and if so, whether the said plot remained available for subsequent allocation or at all.

148. It was the Plaintiff’s evidence that same became a member of the 1st Defendant company in 1978 and thereafter same paid the requisite charges, culminating into same [Plaintiff] being issued with a share certificate.

149. Additionally, it was the Plaintiff’s testimony that other than being issued with a share certificate, the 1st Defendant processed and issued a certificate of ownership pertaining to and concerning Plot No. C.163.

150. For good measure, the fact that the Plaintiff was issued with a certificate of ownership was conceded and acknowledged by DW1, who went further and stated that the said certificate of ownership was signed by Mr. Muchiri, [now deceased], who was the former chairperson of the 1st Defendant.

151. Moreover, the Plaintiff herein also testified that subsequently same was issued with a Letter of allotment over and in respect of Plot No. C.163. Instructively, the Letter of allotment was duly tendered and produced before the court.

152. Other than the foregoing, the Plaintiff tendered and produced before the Honourable court two [2] sets of maps which showed the ground position over and in respect of Plot No. C.163, which was allocated by the 1st Defendant herein.

153. In this regard, it is imperative to underscore that the map which was tendered and produced by the Plaintiff, was neither disputed nor discredited by DW1.

154. To the contrary, DW1 acknowledged and admitted the said maps, which were produced as Exhibits P4 and P7 respectively, save that DW1 contended that the maps which were produced do not correspond with the ground location being claimed by the Plaintiff.

155. However, it is not lost on this court that despite DW1 contending that the maps which were produced by and on behalf of the Plaintiff, namely, Exhibit P4 and P7 respectively, do not correspond with the ground location claimed; DW1 however failed to produce any map or at all.



156. To my mind, it is important to point out that DW1 and by extension the 1st Defendant herein, had custody of all the records pertaining to the various allottee[s] and the corresponding maps and hence same were under an obligation to produce the records.
157. However, for reasons best known to DW1 and by extension the 1st Defendant, same chose to withhold and/or better still, conceal such critical information from the court.
158. Suffice it to point out that where a Party before the court, in this case the 1st Defendant, has custody of critical information, but chooses to withhold same from the court, then the Honourable court is entitled to make an adverse inference against such a party.
159. In this respect, it is appropriate to recall and reiterate the import and tenor of Section 112 of the [Evidence Act](#), Chapter 80 Laws of Kenya.
160. For ease of reference, same are reproduced as hereunder;
112. Proof of special knowledge in civil proceedings
- In civil proceedings, when any fact is especially within the knowledge of any party to those proceedings, the burden of proving or disproving that fact is upon him.
161. Taking into account the foregoing analysis and coupled with the documents which were tendered by and on behalf of the Plaintiff, I come to the conclusion that the Plaintiff herein was duly and lawfully allocated Plot No. C.163 by the 1st Defendant herein.
162. Having disposed of the first limb of the issue herein, it is now appropriate to venture forward and consider whether Plot No. C.163 or better still the ground representing the said plot, could be available for subsequent allocation or otherwise.
163. To start with, there was a contention by the 1st Defendant that the Plot No. C.163, which is claimed by the Plaintiff falls in a different area from (sic) Plot No. V.14944, which was allocated to and in favor of the 2nd Defendant.
164. However, it is not lost on this Honourable court that despite the contention by the 1st Defendant, same neither tendered nor produced any credible evidence to vindicate the said allegation.
165. To the contrary, the Plaintiff tendered evidence to establish and demonstrate that the 2nd Defendant has since encroached onto and/or trespassed upon the Plot, namely C.163, which was allocated unto him [Plaintiff].
166. Taking into account, the testimony by the Plaintiff and in particular the contention that the 2nd Defendant has encroached upon Plot No. C.163, there is no gainsaying that the ground location in respect of Plot No. C.163, indeed corresponds with what is claimed to be Plot number V.14944 [now known as L.R No. Nairobi/Block 105/14265].
167. Arising from the foregoing, it is therefore common ground that despite the distinct numbers given by the 1st Defendant, the ground position that is adverted to is one and the same.
168. Consequently and in the premises, the question that must now be addressed and resolved is whether the disputed ground, whether known as C.163 or V.14944, was available for (sic) allocation to and in favor of the 2nd Defendant in the year 2013 or at all.
169. To my mind, the disputed ground, which was hitherto known as Plot No. C.163, stood allocated and thus alienated in the year 1982; in favor of the Plaintiff and henceforth the disputed ground became unavailable for further allocation or otherwise.



170. Furthermore, it is important to underscore that even though the plot known as C.163 or better still the disputed plot, remained registered in the name of the 1st Defendant; same however became a Trustee for the Plaintiff and could therefore not act in any manner adverse to the rights and interests of the Plaintiff.
171. In any event, once a particular plot or portion of land has been allocated, the allocating authority cannot subsequently seek to re-allocate same or at all.
172. In this respect, it suffices to cite, restate and reiterate the holding of the Court of Appeal in the case *Benja Properties Limited v Syedna Mohammed Burhannudin Sahed & 4 others* [2015] eKLR, where the court held as hereunder;
25. In arriving at our decision, we note that an interest in land cannot be allotted, alienated or transferred when the specific parcel of land allotted is not in existence. Allotment of an interest in land is a transaction in rem attaching to and running with a specific parcel of land. In the instant case, the allotment by the Commissioner of Land to the original allottees did not attach in rem to any land since there was no parcel upon which the allotment could attach. What the 5th respondent, the appellant and the original allottees did was to engage in paper transactions without a parcel of land upon which any interest in land would attach and vest – it was paper transactions without any parcel of land as its substratum.
173. Recently, the foregoing position was re-visited and highlighted by the Court of Appeal in the case of *Philemon L. Wambia v Gaitano Lusitsa Mukofu & 2 others* [2019] eKLR, where the court held thus;
- “36. On our part, we have considered the evidence on record on the two letters of allotment. The evidence on record shows that the first allotment to the suit property was to Mr. Joseph Muturi Muthurania. In *Benja Properties Limited -v- Syedna Mohammed Burhannudin Sahed & 4 others* [2015] eKLR, this Court stated that an allotment of an interest in land is a transaction in rem attaching to and running with a specific parcel of land.
37. In the instant case, the second letter of allotment to the appellant did not attach in rem to any land since there was no parcel upon which the allotment could attach. The first allotment to Mr. Joseph Muturi Muthurania effectively made the suit property unavailable for allotment to the appellant the more when the first allottee had fulfilled the terms and conditions of the allotment.

174. Arising from the foregoing analysis, my answer to issue number two [2] is threefold. Firstly, evidence abound that the Plaintiff herein was duly and lawfully allocated Plot No. C.163, currently known as L.R No. Nairobi/Block 105/14265.

175. Secondly, to the extent that the named property, irrespective of the conflicting description thereof, had been duly allocated, same ceased to be available for subsequent allocation to (sic) the 2nd Defendant.

176. Thirdly, that having hitherto allocated Plot No. C.163 and in particular the disputed ground, the 1st Defendant herein became a Trustee of the allottee [the Plaintiff herein], who had indeed paid the requisite charges and complied with all the terms of the Letter of allotment.



Issue Number 3 Whether the 2nd Defendant acquired lawful rights and/or interest over and in respect of Plot No. V.14944 [now known as L.R Nairobi/Block 105/14265].

177. The 2nd Defendant herein testified before the court and contended that same was lawfully and duly allocated Plot No. V.14944. Furthermore, the 2nd Defendant testified that upon being allocated the named property same paid the requisite charges and was thereafter issued with a non-member share certificate.
178. Additionally, it was the evidence of the witness that same was similarly issued with a certificate of ownership on the 17th December 2012; and which certificate of ownership was duly signed on the reverse thereof by two [2] people, inter-alia, the director of allocation and a surveyor.
179. Other than the foregoing evidence, the 2nd Defendant also averred that same [2nd Defendant] was also issued with a beacon certificate dated the 20th February 2013 and that upon being issued with the beacon certificate, same [2nd Defendant] entered upon and took possession of the suit property.
180. From the foregoing averments and testimony, what becomes apparent is that the 2nd Defendant is contending that same lawfully acquired property known as Plot No. V.14944, now known as L.R No. Nairobi/Block 105/14265.
181. Despite the foregoing evidence by and on behalf of the 2nd Defendant, it is important to recall that during cross examination by Learned counsel for the Plaintiff, DW2 testified and stated as hereunder;
- “I was never issued with a Letter of allotment”
182. The question that does arise is if the 2nd Defendant was never issued with a Letter of allotment, then on what basis did the 2nd Defendant accrue and/or obtain certificate of ownership.
183. Clearly and to my mind, a Letter of allotment is a primary document, which would signify the intendment of the allocating authority to allocate the designated land and thereafter paving way for the allottee to accept the conditions thereunder.
184. To my mind, where there is no Letter of allotment, which essentially constitute[s] the offer, then there cannot be any legitimate contract capable of being accepted and/or acted upon by (sic) the offerree.
185. To this end, it is imperative to recall that for a contract to exist there are certain salient features and/or ingredients that must be complied with and/or satisfied.
186. In this respect, it suffices to cite and reiterate the holding of the Supreme Court of Kenya in the case of *Moi University versus Zaippeline & another* (Petition 43 of 2018) [2022] KESC 29 (KLR) (Civ) (17 June 2022) (Judgment), where the court held thus;

“

- “37. It is trite that for any contract to be valid at law, it must meet certain elements commencing with offer and acceptance. The essential components of a contract as was observed by Harris JA in *Garvey v Richards* [2011] JMCA Civ 16 ought to ordinarily reflect the following principles:
- “[10] It is a well-settled rule that an agreement is not binding as a contract unless it shows an intention by the parties to create a legal relationship. Generally, three basic rules underpin the formation of a contract, namely, an agreement, an intention to enter into contractual relationships and consideration. For a contract to be valid and enforceable all essential terms



governing the relationship of the parties must be incorporated therein. The subject matter must be certain. There must be positive evidence that a contractual obligation, born out of an oral or written agreement is in existence.”

187. Secondly, even if the 2nd Defendant had been issued with a Letter of allotment [which is not the case], there is no gainsaying that by the 20th June 2013, when the 2nd Defendant was purporting to acquire Plot Number V.14944 [now known as L.R No. Nairobi/Block 105/14625], the disputed ground [irrespective of the description], had long been alienated and allocated.
188. In my humble view, the 2nd Defendant herein cannot contend that same acquired any lawful rights and/or interests as pertains to (sic) Plot No. V.14944 [now known as L.R No. Nairobi/Block 105/14625].
189. Before departing from the issue herein, it is appropriate to draw the attention of Learned counsel for the 2nd Defendant and by extension the 2nd Defendant; to the dictum of the Court of Appeal in the case of Joseph N.K. Arap Ng'ok v Moijo Ole Keiwua & 4 others [1997] eKLR, where the court held thus;
- It is trite that such title to landed property can only come into existence after issuance of letter of allotment, meeting the conditions stated in such letter and actual issuance thereafter of title document pursuant to provisions in the Act under which the property is held.
190. Without belaboring the point, it suffices to highlight the position that a valid and lawful title and/or claim to ownership of land, can only ensue if at the onset there was/is a lawful Letter of allotment, which is a precursor to compliance with the terms thereof.
191. In view of the foregoing, I am obliged to answer issue number three [3] in the negative. In any event, I beg to point out that the 2nd Defendant herein neither accrued nor acquired any lawful interests to and in respect of the disputed property.

Issue Number 4 What reliefs, if any; ought to be granted.

192. Whilst discussing issue number two [2] herein before, this court found and held that the Plaintiff herein was lawfully allocated Plot No. C.163 by the 1st Defendant herein.
193. Furthermore, this court also found and held that upon being allocated Plot No. C.163 by the 1st Defendant, the Plaintiff proceeded to and complied with the terms of the Letter of allotment, payment of the requisite charges as well as the survey fees, the latter which was acknowledged and received in the year 2018.
194. On the other hand, the court also came to the conclusion that upon allocating Plot No. C.163 to the Plaintiff, who thereafter complied with the terms thereof, the 1st Defendant became a Trustee of the Plaintiff and could not thereafter purport to re-allocate the same property, albeit disguised as Plot No. V.14944 or at all.
195. In any event, the court also found and held that having not been issued with a Letter of allotment, which position was conceded by the 2nd Defendant, same [2nd Defendant] therefore acquired no lawful interests to and in respect of the disputed property, whether known as Plot C.163 or V.4944 [now known as L.R No. Nairobi/Block 105/14625].
196. Having found and held in the manner articulated herein before, there is no gainsaying that the Plaintiff herein has indeed proved his claim to and in respect of Plot No. C.163 [now known as L.R No. Nairobi/Block 105/14625].



197. Conversely, the 2nd Defendant, who was duped by the 1st Defendant and in respect of whom no letter of allotment was issued, has neither established nor demonstrated any lawful rights and/or interests to the property referred to as V.14944 [now known as L.R No. Nairobi/Block 105/14625].
198. Consequently and in the premises, this court comes to the conclusion that the Plaintiff herein has proved his case on a balance of probabilities [preponderance of probability] and same is entitled to the reliefs sought at the foot of the amended Plaint dated the 1st July 2022.

FINAL DISPOSITION:

199. From the analysis and exposition, which have been highlighted in the body of the Judgment, it is evident that the Plaintiff herein has duly proved his claim to the requisite standard [see Section 107, 108 and 109 of the *Evidence Act*, Chapter 80 Laws of Kenya].
200. Conversely, though the 2nd Defendant had also laid a claim to and in respect of the suit property otherwise disguised as Plot No. V.14944, which the court has found to sit on the same ground location as Plot No. C.163, however, the 2nd Defendant has not been able to demonstrate his entitlement thereto.
201. Consequently and in the premises, the Plaintiff's claim is meritorious and thus Judgment be and is hereby entered in favor of the Plaintiff in the following terms;
- i. A declaration be and is hereby granted that the Plaintiff is the absolute, rightful and bona fide owner of the suit property known as Plot No. 105/14265 [formerly C.163].
 - ii. The 1st Defendant herein [Embakasi Ranching & Co Ltd] be and is hereby ordered and directed to process, prepare, execute and engross the requisite transfer instrument [lease instrument] as pertains to L.R No. Nairobi/Block 105/14265] with a view to transferring same in favor of the Plaintiff.
 - iii. The process, preparation and engrossment of the transfer instrument [lease instrument] in respect of L.R No. Nairobi/Block 105/14265] shall be undertaken and concluded within a duration of 60 days from the date hereof.
 - iv. In default by the 1st Defendant herein [Embakasi Ranching & Co Ltd] to process, execute and engross the requisite transfer instrument [lease instrument] in terms of clause (iii) above within 60 days, the Deputy Registrar of the court shall proceed to execute the requisite transfer instrument on behalf of the 1st Defendant and in accordance with Section 98 of the *Civil Procedure Act*, to facilitate the effective transfer and registration of L.R No. Nairobi/Block 105/14265.
 - v. The Defendants herein and in particular the 2nd Defendant [John Muchai Kanai], shall vacate and hand over L.R No. Nairobi/Block 105/14265 to the Plaintiff within 60 days from the date hereof.
 - vi. In default to vacate and hand over vacant possession of L.R No. Nairobi/Block 105/14265 to the Plaintiff in terms of (v), the Plaintiff shall be at liberty to levy eviction against the 2nd Defendant; and in the event of such eviction, the costs incurred shall be certified by the Deputy Registrar and be recovered from the 2nd Defendant.
 - vii. There be and is hereby granted an order of permanent injunction restraining the 1st and 2nd Defendants and/or their servants, officers, officials, employees and/or agents or any other



person acting under their instruction from alienating, entering upon, interfering with and/or in any manner dealing with the suit property contrary to the rights and interests of the Plaintiff.

- viii. Costs of the suit be and are hereby awarded to the Plaintiff to be borne by the Defendant[s] jointly and/or severally.

202. It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 26TH DAY OF FEBRUARY 2024.

OGUTTU MBOYA

JUDGE

In the Presence of;

Court Assistant: Benson.

Mr. Job Marasi for the Plaintiff.

Ms. Mutua h/b for Mr. Macharia Gakuo for the 1st Defendant.

N/A for the 2nd Defendant.

