



**Mwangi v County Council of Nairobi (Formerly City Council of Nairobi) & 2 others
(Environment & Land Case 980 of 2015) [2024] KEELC 4188 (KLR) (9 May 2024) (Judgment)**

Neutral citation: [2024] KEELC 4188 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 980 OF 2015**

JA MOGENI, J

MAY 9, 2024

BETWEEN

PAUL MWAURA MWANGI PLAINTIFF

AND

**COUNTY COUNCIL OF NAIROBI (FORMERLY CITY COUNCIL OF
NAIROBI) 1ST DEFENDANT**

THE CHIEF LAND REGISTRAR 2ND DEFENDANT

SINOHYDRO TIANJIN ENGINEERING COMPANY LTD 3RD DEFENDANT

JUDGMENT

1. By a Further Amended Complaint dated 01/12/2021, the Plaintiff herein sought for Judgment against the Defendants jointly and severally for the following orders: -
 1. A declaration that the Plaintiff is entitled to L.R. No. 209/14311/12 Umoja as a lawful allottee of the same by the 1st Defendant the Plaintiff having paid the requisite allotment fees, following the said declaration, the 2nd Defendant should issue the title to L.R. No. 209/14311/12 in the Plaintiff's names.
 - 1A. Without prejudice to the prayers herein the Plaintiff to be compensated for the loss of her duly allotted plot by the 1st Defendant at the prevailing market value following a valuation to be conducted by a reputable and approved land valuer.
 2. A permanent injunction restraining the 1st and 2nd Defendant from issuing or registering titles numbers, L.R. No. 209/21314 to L.R. No. 21334 while omitting L.R. No. 209/14311/12 unless L.R. No. 209/14311/12 is incorporated and registered in the Plaintiff's names as well, the 1st Defendant having legitimately allotted the said parcel of land to the Plaintiff who has



paid the requisite fees for it and deserved of the title being issued and registered in her names by the 2nd Defendant.

2A. A permanent injunction issued against the 3rd Defendant restraining them either by themselves, their servants, agents, or employees from carrying out any activities including construction or development on the property known as L.R. No. 209/21314 to L.R. No. 21334 which includes the property dully allocated to and paid for by the Plaintiff initially L.R. No. 209/14311/12.

3. A permanent injunction restraining any dealings, construction or development on the property known originally known as L.R Number 209/14311 from which the Plaintiffs L.R Number 209/14311/12 had been curved out and formally allotted to her.

4. **Costs of the suit plus interest thereon.**

2. The suit is opposed. The 1st Defendant entered appearance on 20/12/2021 and filed a defence dated 21/12/2021. The 2nd Defendant entered appearance and filed a defence dated 10/08/2017. The 3rd Defendant does not appear to have entered appearance or filed any defence in respect of the subject matter. I note that the Plaintiff has filed a reply to the 3rd Defendant's defence but the 3rd Defendant's defence is not on the Court record.

3. Based on the foregoing and upon pleadings being closed, the matter was set down for hearing and the same indeed proceeded to and was heard. It is imperative to note that only the Plaintiff who called one witness to testify on 7/11/2023 and at the close of the Plaintiff's case, the Defendants indicated that they had no witnesses to call. For completeness of record, when the hearing was concluded, the 1st and 3rd Defendants were not in attendance and hence their cases were closed without any evidence having been led by and/or on behalf of the 1st and 3rd Defendants. The 2nd Defendant's counsel was in attendance but moved to close the 2nd Defendant's case without any evidence having been led by and/or on behalf of the 2nd Defendant.

Plaintiff's Case

4. The Plaintiff seeks declaratory, restrictive/restraining, and specific performance orders against the 1st and 2nd Defendants jointly and severally arising from what she states a breach of an implied contract and promise to process the title document of her lawfully allocated portion of land known as Commercial Plot No. L.R. Number 209/14311/12 which was from the scheme known as L.R. Number 209/14311.

5. The Plaintiff also seeks injunctive orders against the 3rd Defendants restraining them from carrying out any development, construction or alteration on the land known as Commercial Plot No. L.R. Number 209/14311/12 which was from the scheme known as L.R. Number 209/14311 which she is aware has now been given fresh numbers being L.R. No. 209/2134 to 209/21334 whereby the Plaintiff has not been given or allotted her earlier allotted piece.

6. It is the Plaintiffs' case that the 1st Defendant vide an allotment letter dated 6/05/2001 offered her the allotment of Plot Number 209/14311/12 upon terms and conditions expressly spelt out in the said letter. The Plaintiff went ahead to accept the offer and paid the requisite fees to formalize the allotment including the standard premium and survey fees pursuant to the letter of offer. This was in fact officially receipted by the 1st Defendant. The Plaintiff states that following such payment, the parcel of land was to be surveyed and sub divided and allottees including her were to be given titles in their respective names following registration of the same by the 2nd Defendant to whom the 1st Defendant undertook to forward the sub divided plans for this purpose. The Plaintiff states that her



allotted plot to be registered in her names was the one known as L.R. Number 209/14311/12 following the demarcation and subdivision of the mother title of the property by the 1st Defendant, through the Department of Survey and that of Planning who would then forward the same for registration and issuance of titles by the 2nd Defendant. The Plaintiff adds that since her portion had been identified as Commercial Plot No. L.R. Number 209/14311/12 and deed plans mapped out, she went to pay her portion's rates at the 1st Defendant's offices in anticipation that once the 1st Defendant proceeds to successfully subdivide and curve out the individual titles, her portion of the subdivided title would be issued in her names by the 2nd Defendant. The Plaintiff states that trusting that the Defendant would honor its side of the bargain pursuant to the letter of offer awaited to be notified when issuance of the title to her portion shall be done, which has not been forthcoming to date despite having paid all the necessary fees for such allotment.

7. It has now come to the Plaintiff's knowledge that the 1st Defendant may or has now forwarded the sub-divided plans to the 2nd Defendant for issuance of individual titles but her name as a lawful allottee of L.R. No. 209/14311/12 Umoja has been omitted yet she has been paying for the same ever since the 1st Defendant offered it to her the said allotment never having been revoked or such revocation communicated to her and if at all.
8. The Plaintiff further adds that in fact the plan that has been submitted to the 2nd Defendant by the 1st Defendant for issuance of titles pursuant to the sub division contains totally different Land Reference numbers from that she was shown and anticipated her title to be curved from but the ground remains that which she was allocated and shown by the 1st Defendant. The 1st Defendant has submitted a plan which refers to plot numbers as L.R. Numbers 209/2134 to 209/21334 and not that containing her allotted plot L.R. Number 209/14311/12 which on the ground she reiterates the submitted L.R. Numbers refer to what she was allotted and accepted by the 1st Defendant.
9. Following this, the Plaintiff is apprehensive that the 2nd Defendant may proceed and issue titles of her allotted and paid for subdivided parcel of land to some other third party other than herself in respect to plot L.R. No. 209/14311/12 which it is now apparent from the map submitted or drawn showing the sub divisions, now described as L.R. Nos. 209/2134 to 209/21334 amongst which the plot she was allotted by the 1st Defendant does not appear which would occasion her great loss and damage, having immensely invested in acquisition of the portion. The Plaintiff states that it has also come to her attention the fact that the 1st Defendant has through some unknown persons embarked on building a stone wall round the whole area hers included which persons it is feared may anytime move to put up structures either permanent or semi-permanent on the site thereby denying her access or possession of her lawfully allotted and paid for plot thus seeks an order to stop any further development or dealings on the suit property by any person.
10. The Plaintiff avers that it has now come to her attention that the 3rd Defendant has now moved upon the subject property and contracted by either the 1st Defendant and has placed thereon heavy machinery with the intention of either constructing or developing on the subject property which includes the one the 1st Defendant had allotted to the Plaintiff. The Plaintiff avers that she is also aware that the 3rd Defendant is a construction company and having moved on and shown signs of developing or constructing on the suit land by placing machinery on the ground, the only remedy she has is to have this court issue injunctive orders against the 3rd Defendants restraining them from carrying out any intended development, construction, improvement or whatsoever activity on the subject land which if not she stands to lose out on her duly allotted plot and the money she paid out for its as premium. The Plaintiff states that the 1st Defendant is in breach of the implied and express contract to allot her title to her plot L.R. No. 209/14311/12 and claims damages for such breach and promise to apportion her



the land after payment of the requisite fees which she had dutifully done in anticipation of acquiring title to it.

11. The Plaintiff therefore seeks declaratory orders and restraining orders to salvage what was rightfully allotted to her and paid for in anticipation of the title. The Plaintiff in the alternative but without prejudice shall seek compensation from the 1st Defendant for the loss of the plot they duly allotted her.

Evidence by the Plaintiff

12. PW1 – Paul Mwaura Mwangi testified that the suit had initially been filed by Hannah Mwangi who is his late mother. He relied on his substituted witness statement dated 3/07/2023 together with his list of documents dated 7/10/2015 as his evidence in chief. The documents were marked as PWExh 1-10. It was his testimony that he came to court seeking a permanent injunction against the defendants who have tried to encroach. The suit property was allotted to his mother as Plot No. LR No. 209/14311 vide an allotment letter dated 6/05/2001. She confirmed with the beacon certificate issued on 6/05/2001. Along with beacon certificate, she paid land rates, land rent and land premium to the defunct City Council. They went and put up posts around the plot and a fence. One morning, they were informed on inquiring what was happening that the 3rd Defendant had been authorized by the 1st Defendant to move on to the suit property. Therefore, they come to court.
13. During cross examination, he testified that the land was allocated to the Plaintiff by City Council of Nairobi. Payments were made to the 1st Defendant. There were no payments made to the 2nd Defendant. He testified that he has never presented his registration documents to the 2nd Defendant and there is no lease filed between the 1st Defendant and the Plaintiff.
14. During re-examination, he testified that he sued the 2nd Defendant because for any subdivision, it was approved by the Ministry of Lands and the 2nd Defendant did not require them to make any payments to them. He 2nd Defendant is the one who issues title to land.
15. With that evidence, the Plaintiff closed his case.

Defendants Case

1st Defendant's case

16. The 1st Defendant entered appearance and filed a defence dated 21/12/2021. The 1st defendant denies all the allegation made in the plaint. The 1st Defendant denied the contents and description in paragraph 2 of the Plaint and avers that there is no entity as the County Council of Nairobi.
17. The 1st defendant denies entering into a contract or promise as pleaded in paragraph 4 of the plaint and as a consequence, denies any breach of contract. The 1st Defendant avers that they have no authority or capacity to issue title. It is also their case that the allegations set out in paragraphs 12-16 of the plaint amount to only hearsay and unfounded rumors and ought to be struck out from the pleadings. They seek to have the entire suit struck off for non-disclosure of a cause of action and the same being res-judicata. The 1st defendant prays that the Plaintiff's suit be struck out with costs.

Plaintiff's reply to the 1st Defendant's Defence

18. The Plaintiff maintained that at the time the cause of action arose, the governing body as far as property allocation in Nairobi was concerned was known as the City Council of Nairobi. The entity has changed names and it is currently known as Nairobi County Government or County Government of Nairobi.



That what the Plaintiff has cited therefore is one and the same body being the 1st Defendant and, in any case, misdescription of a party does not in any way prejudice one's claim.

19. The Plaintiff reiterated the fact that his mother (deceased) of whom he now represents was duly promised and entered into an implied contract by the 1st Defendant that she would be allotted plot number LR No. 209/14311/12 and/or the sub-divisions that shall be carved from LR No. 209/14311. That paragraphs 5,6, 8, 9 and 10 are therefore evidence of the fact that the Plaintiff's mother had in fact a contract with the 1st Defendant to be allotted LR No. 209/14311/12. The Further Amended Plaintiff is clear and unequivocal in bringing out the cause of action and the remedies the Plaintiff seeks. The Plaintiff prays for judgment to be entered as prayed.

2nd Defendant's case

20. The 2nd Defendant filed a statement of defence generally denying the Plaintiff's allegations contained in the plaint and invited the Plaintiff to offer proof. the 2nd Defendant avers that the Plaintiff is not entitled to the orders sought therein. They pray that the Plaintiff's suit against the 2nd Defendant be dismissed with costs.

3rd Defendant's case

21. The 3rd Defendant did not file any defence.

Plaintiff's Reply to the 3rd Defendant's Defence

22. The Plaintiff avers that if at all the 3rd Defendant leased the said parcels of land from the alleged owners, the latter did not have the capacity to enter into such tenancy transactions with them more specifically in respect to commercial plot no. LR No. 209/14311/12 which was from the Plaintiff who had duly paid the requisite premium for the same and was waiting for title numbers and the title from the 1st and 2nd Defendants respectively.
23. The Plaintiff asserts that if at all the alleged owners entered into such transaction with the 3rd Defendant they did so following irregular allocation of the plots to them by the 1st and 2nd Defendants which allocation was therefore void ab initio.
24. The Plaintiff asserts that if at all LR No. 209/14311/12 is not amongst the leased plots, the 1st and 2nd Defendants should map out what they in fact formally allocated to the Plaintiff on the ground as the Plaintiff's ground that was marked out for her by the 1st Defendant is indeed occupied by the 3rd Defendant. The Plaintiff reiterated the fact that the 1st defendant mischievously switched the plot numbers to defeat her claim and that the allegation by the 3rd Defendant that the property is occupied is not that which was allotted to the Plaintiff is a clever way of trying to run away from the truth of the matter when the real situation on the ground reveals otherwise.
25. The plaintiff added that the property that was allegedly leased to the 3rd party under supposed new numbers was irregularly allotted the said number. It is evident that the Plaintiff is a due allottee from the 1st Defendant as she retains her allotment letter and evidence of payment of all the premiums which the 1st Defendant received and therefore could not have entered into a tenancy agreement with the 3rd party over the allotted plot under a different plot number. Reasons wherefore, the plaintiff prays that judgment be entered against the Defendants jointly and severally as prayed for in the further amended plaint.



Evidence by the Defendants

26. The 1st and 3rd Defendants failed to appear in Court on 7/11/2023 and therefore their cases were closed. The 2nd Defendant's counsel also moved to close the 2nd Defendant's case without tendering any evidence at all. Consequently, the 1st, 2nd and 3rd Defendants' cases were closed.

Written submissions.

27. At the close of the case for the respective parties, the Court gave directions on filing of written submissions. By the time of writing this Judgment, it is only the Plaintiff and the 2nd Defendant who had duly submitted and I have considered them. The Plaintiff's written submissions are dated 8/12/2023 and filed on the even date. The 2nd Defendants written submissions are dated 8/11/2023 and filed on 14/12/2023.

Analysis and Determination

28. I carefully considered the pleadings, the evidence adduced, the submissions of the plaintiff as well as the authorities cited and the law relied on. I found two issues for determination. These were:
- a. Whether Commercial Plot No. LR No. 209/14311/12 was duly allocated to the Plaintiff's late mother.
 - b. Whether the suit against the 2nd Defendant ought to be dismissed.
 - c. What orders should issue and who to bear the costs of the suit.
29. I proceeded to analyze them as hereunder:
- a. Whether Commercial Plot No. LR No. 209/14311/12 was duly allocated to the Plaintiff's late mother.
30. The bone of contention in this matter revolves around the ownership of the property known as LR No. 209/14311/12. Proof of ownership of land is found in documentary evidence which lead to the root of title. There must be shown an unbroken chain of documents showing the true owner. Once proof of ownership is tendered then the holder of the documents is entitled to the protection of the law. There is no doubt that such proof will be on a balance of probabilities, but the Court must be left in no doubt that the holder of the documents proved is the one entitled to the property.
31. The evidence tabled by the Plaintiff, PW1, was that on 6/05/2001, the 1st Defendant issued his late mother with an allotment letter ref no. TC/2001/00912 in respect to LR No. 209/14311/12. The Court has seen this document. The same is marked as Exhibit 1 at page 15. This plot was part of the property known as LR No. 209/14311. The Plaintiff asserted that his late mother accepted the offer and pursuant to the terms and conditions contained in the letter of allotment dated 6/05/2001, she paid to the 1st Defendant the stand premium together with other requisite fees. That the 1st Defendant assured her that she shall upon all subdivisions being completed, be given title to her portion. The late plaintiff's mother was issued with a beacon certificate no. 2855 dated 6/05/2011 and executed on 26/06/2007, Exhibit 2 at page 17. He asserts that the 1st Defendant submitted the subdivision maps to the 2nd Defendant for processing of titles earmarked from the original parcel number LR No. 209/14311 but have submitted totally different parcel numbers for issuance of titles to the omission of the plaintiff's late mother' rightfully allotted plot. The plans that were submitted bear different numbers and plots but they refer to the very ground that had been allocated to the plaintiff's late mother and had undertaken to have titles issued in her names.



32. The Plaintiff submitted that they appreciate that it had been held that an allotment letter is not a valid title deed until one acquires title through registration. It is the plaintiff's case that having paid the requisite stand premium in acceptance of the allotment, it was now upon the 1st Defendant to procure registration of the Plaintiff's lease title which they did not do. That instead, they purported to re-number the very plots where the Plaintiff had been allotted and through the office of the 3rd Defendant moved to issue leases to other 3rd parties to the exclusion of the plaintiff. The Plaintiff relied on the case of Charles Munge vs Nairobi City County Government and 3 others (2002) in submitting that the Court in that matter appreciated that the Plaintiff had been issued with an allotment letter and that there were receipts evidencing payment of stand premium and ground rents to entitle him to the property. They added that the High Court wondered how other persons who claim having a lease came to obtain the same yet there was no evidence of the plot being allocated to them. They further submit that no evidence was tabled by either defendant to show that any other person was allocated the Plaintiff's property other than the Plaintiff herself.
33. The Plaintiff's counsel submitted that even though the payment of the stand premiums within the 30 days' period, there was no evidence to the contrary that the plot was re-allocated to any other person by the 1st Defendant. That the mere fact that the 1st Defendant went ahead to receive the late plaintiff's payment of the survey fees and stand premium and in fact signed the beacon certificate in favor of the late plaintiff on 26/06/2007 in respect of the plot it had allocated the late plaintiff meant that they meant that they accepted her as the lawful allottee of plot 12 of the main parcel of land. Looking at the bills (PWExh. 9 & 10) that the 1st Defendant was issuing, in the year 2011 and 2013 for the same plot, it is evident that as recent as 2013, the records the 1st Defendant held at its offices indicated that the late plaintiff was the recognized owner as allottee to the plot known as LR No. 209/14311/12. Therefore, by the 1st Defendant continuing to receive the late Plaintiff's payments towards the same plot it had allocated her by the allotment letter dated 6/05/2001, it meant that she was the lawful allottee to the subject plot and thus the defendants cannot allege late payment of the premiums nor run away from the fact that as recent as the year 2013, the bills that the late plaintiff paid were all issued in her names. There is no evidence that was adduced to indicate that the allotment of plot 12 to the late plaintiff was cancelled or revoked and another person allocated the plot.
34. The Defendants on the other hand did not give cognitive evidence to the effect that they did not issue the Plaintiff's late mother with a letter of allotment or a beacon certificate. None of the Defendants produced any evidence before the Court when the matter came up for hearing.
35. The 2nd Defendant filed written submissions wherein the issue they addressed was whether there is any claim against the 2nd Defendant. According to the 2nd Defendant's submissions, the Plaintiff was allocated the suit parcel by the 1st Defendant who was the allocating authority in this case. All payments were made to the 1st Defendant. There is no lease agreement signed between the Plaintiff and the 1st Defendant in relation to the plot allocated to the plaintiff. There is no proof that the Plaintiff's rights in relation to the suit parcel have crystalized for registration, where the mandate of the 2nd Defendant comes in. The 2nd Defendant has submitted that the Plaintiff has not made any substantive claim against the 2nd Defendant. They relied on the case of Daniel Otieno Migore vs South Nyanza Sugar Co. Ltd [2018] eKLR in stating that parties are bound by their proceedings. That there being no claim made against the 2nd Defendant, the suit against the 2nd Defendant ought to be dismissed with costs.
36. There is enough evidence before the Court to support the Plaintiff's claim that his late mother was issued with an allotment letter to the suit property (Plot no. 12) in 2001 by Nairobi city council, now defunct, who was the predecessor of the 1st Defendant herein.



37. The Plaintiff admits to have paid the stand premiums late. Part of the conditions listed on the allotment letter is that payment of survey fees and any other charges. The said allotment letter also provided that if acceptance and payment is not received within 30 days from the date thereof, the offer contained therein will be considered to have lapsed without further reference to the allottee. I note the defunct Nairobi City Council issued a receipt no. CT/608 dated 17/05/2002 being payment of survey fees in respect to plot no. 12. The defunct Nairobi City Council issued a receipt no. CT/608 dated 28/08/2004 being payment for stand premium for Plot no. LR 209/14311/12. The defunct City Council of Nairobi also issued a bill no. SD1101-00044 dated 5/01/2011 in the name Hannah W Mwangi for search fees. The suit property indicated on the said bill is Commercial Plot No. LR. 209/14311/12. The defunct City Council of Nairobi also issued a bill no. SD1307-00309 dated 10/07/2013 in the name Hannah W Mwangi for ground rent. The suit property indicated on the said bill is Commercial Plot No. LR. 209/14311/12. There is no evidence that the letter of allotment issued to the Plaintiff's late mother was cancelled or re-allocated to another person.
38. Other than the issuance of the bills and receipts, the City Council of Nairobi also proceeded to and carried out a survey in respect of the suit property over and in respect thereof and after the completion of the survey exercise, same issued a beacon certificate to and/or in the name of Hannah W. Mwangi. For clarity, the beacon certificate was issued on 26/06/2007.
39. Simply put, by issuing the foregoing documents, the City Council of Nairobi was confirming that the allottee had duly complied with and/or satisfied the requisite conditions at the foot of the letter of allotment.
40. Having satisfied and/or complied with the terms of the Letter of allotment, the suit property, which had been allotted by the City council of Nairobi thereby ceased to be available for allocation and/or re-allocation, to anyone else.
41. In support of the contention that once an allottee has complied with the terms of the letter of allotment, the land becomes unavailable for re-allocation, it is imperative to take cognizance of the decision in the case of *Republic v City Council of Nairobi & 3 Others* (2014) eKLR where it was held as hereunder;
- “Once allotment letter is issued and the allottee meets the conditions therein, the land in question is no longer available for allotment since a letter of allotment confers absolute right of ownership or proprietorship unless it is challenged by the allotting authority or is acquired through fraud mistake or misrepresentation or that the allotment was out rightly illegal or it was against public interest. In other words, where land has been allocated, the same land cannot be reallocated unless the first allocation is validly and lawfully cancelled.”
42. In my humble view, the 1st Defendant's continued actions of issuing bills in the name of the Plaintiff's late mother meant that the 1st Defendant recognized the Plaintiff's late mother as the owner of Plot 12. That she had satisfied and/or complied with the terms of the Letter of allotment. It is my considered view that the suit property was allocated to one Hannah W. Mwangi and the same cannot be allocated to any other person.
43. During trial, it was established that the Plaintiff had never presented his registration documents to the 2nd Defendant and that there is no lease between the Plaintiff and the 1st Defendant. It is evident that there was no progress in the transaction between the Plaintiff and the 1st Defendant after the issuance of a beacon certificate. The narrative given by the Plaintiff was that he or his late mother was informed that the 1st Defendant was to subdivide the property and thereafter issue individual titles. That the 1st Defendant has submitted a plan which refers to plot numbers as L.R. Numbers 209/2134



to 209/21334 and not that containing her allotted plot L.R. Number 209/14311/12 which on the ground she reiterates the submitted L.R. Numbers refer to what she was allotted and accepted by the 1st Defendant. The Plaintiff is apprehensive that the 2nd Defendant may proceed and issue titles of her allotted and paid for subdivided parcel of land to some other third party other than herself.

44. It is true that the Plaintiff's late mother and the 1st Defendant had not executed any transfer instrument which would then confer the Plaintiff's late mother with the rights and/or interests to and in respect of the suit property. However, the City Council of Nairobi did issue Hannah W. Mwangi with documents which confirmed that the allottee had duly complied with and/or satisfied the requisite conditions at the foot of the letter of allotment.
45. In *Serah Mweru Muhu v. Commissioner of Lands and 2 others*, Petition No.413 of 2012, the court held that: "at its core, and in its broad sense, the doctrine of legitimate expectation is said to arise out of a promise made by a public body or official, which the person relying on it anticipates it will be fulfilled...."
 - a. In *Kuria Green limited vs. the Registrar of titles and another* Petition 107 of 2010, the Court while making reference to a party's legitimate expectation quoted Lord Simon Brown in *R vs DEVON COUNTY COUNCIL ex parte P. BAKER*, [1995] 1 ALL ER, where it was stated that:

"....it is the interest rather than the benefit that is the substance of the expectation. In other words, the expectation arises not because the claimant asserts any specific right to a benefit but rather because his interest in it is one that the law holds protected by the requirements of procedural fairness; the law recognizes that the interest cannot properly be withdrawn (or denied) without the claimant being given an opportunity to comment and without the authority communicating rational grounds for any adverse decision".
46. The import of compliance with the terms of the letter of allotment was to bring to force a legitimate expectation that the allotment could only be revoked procedurally. For avoidance of doubt, I beg to point out that the 1st Defendant already allotted LR No. 209/14311/12 to the Plaintiff's late mother. There is no evidence that the said allotment was revoked and/or cancelled. If at all the 1st Defendant has purported to allocate the suit property to other people, the same will not be a case of double allocation, but one of illegal allocation in so far as the suit property was not available for allocation and/or alienation, at the time when the 1st Defendant will have purported to allocate or re-allocate the same.
47. If it is true that the 1st Defendant has allocated the suit property to third parties, then the same is illegal as the 1st Defendant had no power to allot the same property twice without following the due procedure. The Plaintiff's late mother's allocation had not been recalled or cancelled. In *Benja Properties Limited –vs- Syedna Mohammed Burhannudin Sahed & 4 others* [2015] eKLR, the Court of Appeal held an allotment of an interest in land was a transaction in rem attaching to and running with a specified parcel of land. Any other second allotment could not attach in rem to any land since there was no parcel of land repossessed and/or forfeited which allotment letter could attach. Once the Plaintiff's late mother was allocated the land and her payments were received up to 2013, the parcel was unavailable for allotment to any other third party more so, since the Plaintiff's late mother had fulfilled the terms and conditions of the allotment.
48. The upshot of the foregoing is that the Commercial Plot No. LR No. 209/14311/12 was duly allocated to the Plaintiff's late mother, Hannah W. Mwangi.
 - a. Whether the suit against the 2nd Defendant should be dismissed.



49. The 2nd Defendant submitted that the Plaintiff has not made any substantive claim against the 2nd Defendant. They relied on the case of Daniel Otieno Migore vs South Nyanza Sugar Co. Ltd [2018] eKLR in stating that parties are bound by their proceedings. That there being no claim made against the 2nd Defendant, the suit against the 2nd Defendant ought to be dismissed with costs.
50. The 2nd Defendant only filed a statement of defence generally denying the Plaintiff's allegations contained in the plaint and invited the Plaintiff to offer proof. The 2nd Defendant avers that the Plaintiff is not entitled to the orders sought therein. They pray that the Plaintiff's suit against the 2nd Defendant be dismissed with costs. At trial, the 2nd Defendant's counsel moved to close the 2nd Defendant's case without tendering any evidence at all. It is clear that the 2nd Defendant abandoned this issue by failing to lead any evidence in trial. It is also trite law that new issues cannot be raised in submissions. See Republic v Chairman Public Procurement Administrative Review Board & another Ex-Parte Zapkass Consulting and Training Limited & another [2014] eKLR. To this end, it is my finding that this issue was not properly raised before this Court.
- a. What orders should issue and who to bear the costs of the suit.
51. The upshot of the foregoing is that the Plaintiff's Further Amended Plaintiff has merit. As the Court finds that the Commercial Plot No. LR No. 209/14311/12 was duly allocated to the Plaintiff's late mother, Hannah W. Mwangi and without any evidence of fraud/misrepresentation, then it is evident that the Plaintiff is entitled to protection of the property as provided by Article 40 of *the Constitution* of Kenya. Therefore, the Plaintiff is entitled to the injunction orders sought. I hereby grant prayers (2), (2A) and (3).
52. With regard to prayer (1), the Court already found that the Commercial Plot No. LR No. 209/14311/12 was duly allocated to the Plaintiff's late mother, Hannah W. Mwangi and she is therefore the lawful owner of L.R No. 209/14311/12 Umoja. I find that prayer 1 cannot be issued as drawn subject to the amendments made to the Plaintiff. Prayer 1 as drawn would have an effect that Paul Mwaura Mwangi is the lawful allottee and that is not the case. In the circumstances, the Court determines that prayer (1) in the Further Amended Plaintiff should be granted but subject to a slight amendment to read that Hannah W. Mwangi is the lawful allottee and registration should be in her name.
53. On costs, in light of the above, Judgment is entered in favour of the Plaintiff as set out herein with costs. The Plaintiff is entitled to impose interest at court rates on his costs of this suit until the same are paid in full.
54. It is against the foregoing reasons that I find that the Plaintiff proved his case on a balance of probabilities. His case is hereby allowed. I therefore enter judgment in favour of the Plaintiff against the Defendants in terms prayers (1), (2), (2A), (3) and (4) of the Further Amended Plaintiff dated 01/12/2021 and issue the following orders:
- a. **A declaration is hereby issued that Hannah W. Mwangi is entitled to L.R. No. 209/14311/12 Umoja as a lawful allottee of the same by the 1st Defendant, having paid the requisite allotment fees, following the said declaration, the 2nd Defendant should issue the title to L.R. No. 209/14311/12 in Hannah W. Mwangi's names.**
- **b. An order of permanent injunction is hereby issued restraining the 1st and 2nd Defendant from issuing or registering titles numbers, L.R. No. 209/21314 to L.R. No. 21334 while omitting L.R. No. 209/14311/12 unless L.R. No. 209/14311/12 is incorporated and registered in Hannah W. Mwangi's names as well, the 1st Defendant having legitimately allotted the said



parcel of land to Hannah W. Mwangi who has paid the requisite fees for it and deserves the title being issued and registered in her names by the 2nd Defendant.**

c. An order of permanent injunction is hereby issued against the 3rd Defendant restraining them either by themselves, their servants, agents, or employees from carrying out any activities including construction or development on the property known as L.R. No. 209/21314 to L.R. No. 21334 which includes the property dully allocated to and paid for by Hannah W. Mwangi initially L.R. No. 209/14311/12.

d. An order of permanent injunction is hereby issued restraining any dealings, construction or development on the property known originally known as L.R Number 209/14311 from which Hannah W. Mwangi's L.R Number 209/14311/12 had been curved out and formally allotted to her.

e. The Plaintiff is awarded costs of the suit plus interest thereon.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 9TH DAY OF MAY, 2024.

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MOGENI J

JUDGE

Judgement read in virtual court in the presence of:

Mr. Kuloba for Plaintiff

Mr. Mariatte holding brief for Mr. Gikunda for Respondent

Ms. Fatuma holding brief for Ms. Kerubo for 2nd respondent

Mr. Ochieng for 3rd Defendant

Ms. C. Sagina - Court Assistant.

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MOGENI J

JUDGE

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